



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA

**Riga, 2 December 2009**

**in the case No. 2009-07-0103**

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 Roberts Mutulis,

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 10 November 2009 in writing examined the case

**“On Compliance of the First Part of Section 74 of the Sentence Execution Code of Latvia and Para 88 of the 30 May 2006 Cabinet of Ministers Regulation No. 423 "Regulations Regarding Internal Rules of Order of Places of Deprivation of Liberty" with Article 96 and Article 104 of the Satversme (Constitution) of the Republic of Latvia”**

### **The Facts**

1. On 23 December 1970, the Supreme Council of the Latvian SSR (*Latvijas PSR Augstākā padome*) adopted the Corrective Labour Code. The Decision “On Application of the Latvian SSR Legislative Acts” of the Supreme Council of the

Republic of Latvia adopted on 29 August 1991 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 “Amendments to the Latvian Corrective Labour Code” adopted on 25 December 1994 came into force. This Law provided for a new wording of the title of the Law, namely, the Latvian Penalty Execution Code (hereinafter – the Code), which is its current title.

The Second part of Section 74 of the Code provides for the regime in a disciplinary punishment isolation cell. The first part of the above mentioned Section provides, according to its effective wording: “Convicted persons who are held in a disciplinary punishment isolation cell shall not have the right to have meetings, receive consignments, parcels and postal parcels, to purchase foodstuffs, send letters to private persons and use table games; they shall also be prohibited smoking.”

2. Section XIV of 30 May 2006 of the Cabinet Regulation No. 423 “Regulations Regarding Internal Rules of Order of Places of Deprivation of Liberty” (hereinafter – Regulation No. 423) regulates the procedure for application of inducements and disciplinary punishments for the convicts. The wording of Section 88 of the Regulation No. 423, that was valid at the time when the case was initiated, provided the following: “The prohibition established for convicted persons held in a disciplinary punishment isolation cell to send or receive letters shall not apply to applications and complaints to the prosecutor’s office or the Head of the Latvian prison Administration. Based on a request of the convicted person, he or she shall be provided with stationery and envelopes.”

On 12 May 2009, the Cabinet of Ministers adopted Regulation no. 413 “Amendments to the 30 May 2006 Cabinet of Ministers Regulations No. 423 “Regulations Regarding Internal Rules of Order of Places of Deprivation of Liberty”” (hereinafter – Regulation No. 413), that provided for the following wording of Section 88 of the Regulation No. 423: “Based on a request of a convicted person held in a disciplinary punishment isolation cell, the place of deprivation of liberty shall provide them the possibility to send letters, except for sending letters to private persons, in accordance with the procedure established in the normative regulatory acts.”

**3.** The applicant **Roberts Mutulis** (hereinafter – the Applicant) holds that the prohibition to send letters included in the first part of Section 74 of the Code and Section 88 of the Regulation No. 423 (the wording that was effective before Regulation No. 413 was issued) does not comply with Article 96 and Article 104 of the Satversme.

Under the Contested Norms, the convicted persons who are held in a disciplinary punishment isolation cell do not have the right to send letters to or to receive letters from relatives. Such way of communication could be restricted and controlled with a view to eliminate hindrance of criminal investigation, prevent any criminal offence, and protect crime victims; however convicted persons should be ensured the minimum level of communication, i.e. the possibility to communicate with relatives. The prohibition included in the Contested Norms does not have a legitimate objective. Moreover, any correspondence with relatives is being censored. Thus planning of new crimes is prevented. Moreover, this gives no benefit to the society if the convicted person is denied the right to family life.

Persons can exercise the rights guaranteed in Article 104 of the Satversme by submitting complaints, applications or suggestions any State or local government institution. Section 88 of the Regulation No. 423 includes a prohibition to communicate with State authorities. Prosecutor's office and the Head of the Latvian Prison Administration are an exception. Decisions issued by authorities usually establish a term, within which it is possible to contest or appeal these decision. If a convicted person is held in disciplinary punishment isolation cell, he or she might be denied the right to contest or appeal against authority's decision. It is possible to re-establish the term; however the above mentioned prohibition shall be regarded as an ungrounded encumbrance. The prohibition to have correspondence with State authorities does not have a legitimate objective and therefore the Contested Norms do not comply with Article 104 of the Satversme.

**4.** The institution that issued the Contested Norm, **the Saeima** (Parliament) does not agree with the opinion of the Applicant and holds that the Contested Norms do comply with Article 96 and Article 104 of the Satversme

According to the Saeima, the Section 74 (1) of the Code provides for a restriction that applies to sending letters to private persons; however the Section does not prohibit receiving letters by convicted persons held in a disciplinary punishment isolation cell. Section 49 (3) of the Code is applicable to convicted persons held in a disciplinary punishment isolation cell, this Section stating the following: “Letters and telegrams addressed to convicted persons shall be handed over to them, as well as their letters and telegrams shall be send to the addressees by the administration of the place of deprivation of liberty no later than within three days from the date of reception or passing over of a letter or a telegram.”

Section 74 (1) of the Code does not restrict the right of convicted persons held in a disciplinary punishment isolation cell to send letters to State and local government institutions or to receive letters from the above mentioned institutions and thus does not infringe the right to address submissions to State or local government institutions and to receive a materially responsive reply, as guaranteed to a person in Article 104 of the Satversme. This norm only includes a prohibition to send letters to private persons.

Having analysed compliance of the words “to send letters to private persons” of Section 74 (1) of the Code with Article 96 of the Satversme, the Saeima indicates that the duty of the State to help a person in detention to maintain relations with relatives from the right to private and family life. These rights, however are not absolute and certain restrictions to the right to inviolability of private life are justifiable.

The Saeima holds that, when assessing the legitimate objective and compliance of the restriction included in the Contested Norm with the principle of proportionality, it is necessary to take into account the fact that separation of the convicted person from others by locating him or her in a disciplinary punishment isolation cell and the stress related thereto is an impermissible feature of a place of deprivation of liberty.

The duty of the State is to ensure a good order in a place of deprivation of liberty. One of the instruments for ensuring it is disciplinary punishment of convicted persons for breaching the regime. The result of such disciplinary punishment, which is a lawful objective of restrictions applied, is maintenance of a proper regime in a place of deprivation of liberty insofar as it protects rights and ensures security of other convicts and personnel. Section 24.2 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 communication may be subject to restrictions and monitoring 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. Consequently, the restriction included in the Contested Norm has a legitimate objective, namely, the objective to protect constitutional values mentioned in Article 116, which is security of the society by ensuring observation of good order in places of deprivation of liberty.

Since holding a convicted person in a disciplinary punishment isolation cell is an exceptional disciplinary punishment, the objective of which is to ensure that a convicted person would not breach regulations regarding sentence serving regime, it seems logical and evident to restrict communication of such convicted person with private persons. The Saeima emphasized that the Contested Norm does not include a prohibition to communication with the family. A person is held in a disciplinary punishment isolation cell for a short term, which does not exceed 15 days. The convicted persons located in a disciplinary punishment isolation cell can receive all letters and send telegrams without any restriction. Consequently, convicted persons held in a disciplinary punishment isolation cell are ensured with minimum communication with relatives and other persons.

According to the Saeima, the prohibition to send letters to private persons established for convicted persons held in a disciplinary punishment isolation cell is necessary and shall be regarded as a proportionate instrument if compared with the gravity of the offence. There exist no other ways of ensuring isolation of convicted persons indispensable to achieve his or her submission to the requirements of serving a punishment. Consequently, restriction established in the Contested Norm complies with the principle of proportionality.

Taking into account the aforesaid, the Saeima asks the Court to recognize Section 74 (1) as compliant with Article 96 and Article 104 of the Satversme.

**5.** The institution that issued the Contested Norm of the regulations, **the Cabinet of Ministers** indicates that the rights guaranteed in Article 94 and Article 104

of the Satversme can be restricted if the restriction is provided by law, it has a legitimate objective and is proportional. The Regulation No. 423 has been adopted based on Section 11 (5) and Section 47 (1) of the Code. Namely, the Regulation was adopted in accordance with the authority delegated to the Cabinet of Ministers by law. Consequently, Section 88 of the Regulation No. 423 has been adopted in accordance with law.

However, Section 88 of the Regulation No.423 in the wording effective at the moment when the case was initiated was in conflict with Section 74 (1) of the Code because it restricted the rights established in the Code. Namely, the Code provided for a restriction to convicted persons held in a disciplinary punishment isolation cell to send letters to private persons, whilst Section 88 of the Regulation No. 423 provides for a general restriction to receive and send letters, except for complaints and application to prosecutor's office or the Head of the Latvian Prison Administration. Consequently, according to Section 15 (6) of the Administrative Procedure Law, Section 88 of the Regulation No. 423 shall not be applicable and could not serve as the grounds for restricting the human rights.

To prevent non-compliance of Section 88 of the Regulation No. 423 with Section 74 (1) of the Code, the Regulation No. 413 was adopted. The latter Regulation provided for a new wording of Section 88 of the Regulation No. 423. The present wording of this Section does not include any restriction of rights established in Article 96 and Article 104 of the Satversme. Consequently, the Cabinet of Ministers asks the Constitutional Court to terminate proceeding in the part of the case relating to compliance of Article 88 of the Regulation No. 423 with Article 96 and Article 104 of the Satversme.

**6. The summoned person – the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) indicates that the prohibition to send letters to private persons established in Section 74 (1) of the Code does not have a legitimate objective. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the European Human Rights Convention) and Section 24.2 of the European Prison Rules provide for particular cases when it is

allowed to restrict the right of persons to communicate. However, in any case it is necessary to provide for a possibility to communicate at least at the minimum level.

It is necessary to take into account the fact that the legitimate objectives established in the European Prison Rules and Article 116 of the Satversme are reached by censoring communication of the convicted persons in accordance with Article 41 of the Code. However, if they are fully denied the right to communicate with private persons, the right of persons to private life are being restricted. Likewise, this prohibition, namely, the prohibition to communicate with private persons, is not necessary in a democratic society. The prohibition to receive letters from State and local government institutions neither has a legitimate objective and it is not necessary in a democratic society.

**7. The Latvian Prison Administration** informs that convicted persons held in a disciplinary punishment isolation cell do not have the possibility to communicate with the relatives before the release and that letters, postal parcels, consignments and packages addressed to the convicted persons held in a disciplinary punishment isolation cell are handed to them after the release from the isolation cell. Likewise, convicts held in a disciplinary punishment isolation cell cannot send telegrams to private persons.

Communication of convicts is paid by the convicts themselves. Only costs for the communication of the convicts established in Section 50 (3) and (4) of the Code are covered from the budget of the place of deprivation of liberty. However, communication of convicts with State and local government institutions is paid from the budget resources of the place of deprivation of liberty if the convicted person does not have any resources at his or her disposal and the convict contests an administrative act or factual activities of these authorities or sends an application requesting State provided legal assistance.

**The Constitutional Court has concluded:**

**8.** The Constitutional Court has initiated the case on compliance of the Contested Norms with both, Article 96 and Article 104 of the Satversme.

9. Article 104 of the Satversme provides the following: „ Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language.” The Constitutional Court has initiated a case on compliance of the Contested Norms with the entire Article 104 of the Satversme. However, it can be concluded from the application that the Applicant asks to assess compliance of the Contested Norms with the first sentence of Article 104 of the Satversme insofar as it provides for the rights to address submissions to State and local government institutions. Consequently, the Constitutional Court shall assess compliance of the Contested Norms with Article 104 of the Satversme.

The Constitutional Court shares the opinion of the Saeima and the Cabinet of Ministers, namely, that Section 74 (1) of the Code does not prohibit the convicts held in a disciplinary punishment isolation cell to send letters to State and local government institutions and to receive letters from the above mentioned institutions. It is only prohibited to send letters to private persons, as well as to receive consignments, parcels and postal parcels. Consequently, Section 74 (1) of the Code does not deny the right to convicted persons held in a disciplinary punishment isolation cell to send letters to State and local government institutions or to receive letters from the above mentioned institutions.

On 6 February 2006, the Constitutional Court adopted a judgment in the case No. 2005-17-01 “On the Compliance of the Words “to Send Letters” Included in Section 74 (the First Part) of the Latvian Penalty Execution Code with Articles 89, 92 and 104 of the Satversme”. At the time when the judgment was adopted, Section 74 (1) of the Code provided, among the rest things, a prohibition for the convicts held in a disciplinary punishment isolation cell to send letters. It was concluded in the judgment that the words “to send letters”, which are included in Section 74 (the first Part) of the Code forbid the convicted person to send letters only to private persons, but does not restrict his/her correspondence with courts and other State and local authority institutions (*see: Judgment of 6 February 2006 by the Constitutional Court in the case No. 2005-17-01, Para 8.2*). The present wording of Section 74 (1) of the Code provides that the prohibition shall apply only to sending letters to private persons and

therefore it does not the right of the Applicant to address State and local government institutions, as provided for in Article 104 of the Satversme.

The Constitutional Court also indicates that the interpretation of Section 74 (1) of the Code offered by the Latvian Prison Administration is erroneous insofar as it applies to receiving of letters sent by State or local government institutions.

It is not possible to agree with the opinion of the Latvian Prison Administration that letters from State or local government institutions should be handed to the convicted persons held in a disciplinary punishment isolation cell only after their release from the isolation cell. Section 49 (3) of the Code shall be applicable to the above mentioned convicted persons. This Section provides that letters addressed to the convicts shall be handed over to them by the administration of the place of deprivation of liberty no later than within three days from the date of reception or passing over of a letter. This also applies to letters sent by State or local government institutions.

**Consequently, Section 74 (1) of the Code does not restrict the rights of a person guaranteed in Article 104 of the Satversme and complies with Article 104 of the Satversme.**

**10.** The case under review was also initiated with a view to examine compliance of Section 88 of the Cabinet of Ministers Regulation No. 423 with Article 96 and Article 104 of the Satversme.

On 12 May 2009, the Cabinet of Ministers adopted the Regulation No. 413 that provided for a new wording of Section 88 of the Regulation No. 423. The wording of Section 88 of the Regulation No. 423 effective at the time when the case was initiated provided that convicted persons held in a disciplinary punishment isolation cell shall have the right to send letters to and receive letters from the prosecutor's office or the Head of the Latvian prison Administration. However, the present wording of this Section provides that based on a request of the convicted person, he or she shall be provided with the possibility to send and receive letters from private persons.

Item 2 of the first part of Article 29 of the Constitutional Court Law provides, that proceedings in the case may be closed before the judgment is announced by a decision of the Constitutional Court if the disputed legal norm (act) is no longer in effect. The abovementioned has been established in order to ensure economy of the

Constitutional Court process and that the Constitutional Court would not render judgment in cases where a dispute no more exists (*see: Judgment of 12 February 2008 by the Constitutional Court in the case No. 2007-15-01, Para 4*). Therefore the Constitutional Court shall assess whether there exist considerations that would require continue proceedings in the case.

Unlike the wording of Section 88 of the Regulation No. 423 that was effective at the time when the case under review was initiated, the present wording of the above mentioned Section provides that based on a request of a convicted person held in a disciplinary punishment isolation cell, the place of deprivation of liberty shall provide them the possibility to send letters, except for sending letters to private persons, in accordance with the procedure established in the normative regulatory acts. It follows from the above mentioned norm and Section 71 (1) of the Code that Section 88 of the Regulation No. 423 according to the wording of the Regulation No. 413 does not restrict communication of convicted persons held in a disciplinary punishment isolation cell with courts and other State and local government institutions and complies with Article 104 of the Satversme. Consequently, it can be concluded that the Cabinet of Ministers has prevented the dispute on compliance of Section 88 of the Regulation No. 423 with Article 104 of the Satversme and the proceedings in this part of the case shall be terminated.

In the event if a contested norm is amended before the judgment is adopted, the Constitutional Court shall have the right to continue proceedings in case if termination of the case would not allow examining claim of the Applicant on its merits (*see, e.g.: Judgment of 12 June 2002 by the Constitutional Court in the case No. 2001-15-03*). The former and the present wording of Section 88 of the Regulation No. 423 prohibit convicted persons held in a disciplinary punishment isolation cell to send letters to private persons. The Constitutional Court concludes that if the proceedings regarding compliance of Section 88 of the Regulation No. 423 with Article 96 of the Satversme were terminated, then the claim of the Application on compliance of the prohibition to send letters to private persons would not be assessed.

**Consequently, the proceedings in the part of the case regarding compliance of Section 88 of the Regulation No. 423 (the wording of 3 June 2006) with Article 104 of the Satversme shall be terminated, whilst the proceedings in the part of the**

**case regarding compliance of the effective wording of Section 88 of the Regulation No. 423 with Article 96 of the Satversme shall be continued.**

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

It follows from the application that the Applicant asks to assess compliance of the prohibition included in the Contested Norms, namely, the prohibition to send letters to private persons, with the right to family life. Although Article 96 of the Satversme *expressis verbis* provides only for the rights to inviolability of private life, the Constitutional Court has concluded that the right to inviolability of private right included in Article 96 of the Satversme includes also the right to inviolability of family life and the right to maintain relations with family members and other persons guaranteed in Article 110 of the Satversme. 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 the abovementioned right (*see: Judgment of 23 April 2009 by the Constitutional Court in the case No. 2008-42-01, Para 8 and Para 10*).

**12.** When assessing compliance of the Contested Norms with Article 96 of the Satversme, first it is necessary to establish whether the Contested Norms restrict or not the fundamental rights of the Applicant established in this Article of the Satversme.

It is possible to agree with the opinion of the Saeima that the right of persons in custody to private life are not equal with the same right of persons in freedom. The rights of these persons to communicate with family members and other persons are being restricted in accordance with the form of a place of deprivation of liberty. Communication with family members and other persons is one of the ways how a person can maintain relations with family members. If a person is denied the possibility to send letters to their family members, it is denied the possibility to maintain relations with them.

**12.1.** Section 74 (1) of the Code provide that convicted persons who are held in a disciplinary punishment isolation cell shall not have the right to have meetings,

receive consignments, parcels and postal parcels, to purchase foodstuffs, send letters to private persons and use table games; they shall also be prohibited smoking.

Although the Code does not provide for a definition of the term “private person”, it is possible to conclude, when interpreting systematically norms included in the Code, that the term “private person” also includes family members. The Code does not provide for any other special legal norm that would ensure convicted persons held in a disciplinary punishment isolation cell wish a possibility to send letters to family members. Moreover, the prohibition to send letters to private persons is just one of the restrictions of the rights included in Section 74 (1) of the Code. Consequently, this is not Section 74 (1) of the Code but the only its words “to send letters to private persons” that prohibits a convicted person held in disciplinary punishment isolation cell to send letters to their family members. It also follows from the application that the Applicant asks the Constitutional Court to only assess constitutionality of the words “to send letters to private persons” of Section 74 (1) of the Code.

**12.2.** Section 88 of the Regulation No. 423 (the wording of the Regulation No. 413) provides for the right of convicted persons held in a disciplinary punishment isolation cell to send letters to State and local government institutions, as well as a prohibition to send letters to private persons.

This Contested Norm *expressis verbis* provides that convicted persons held in a disciplinary punishment isolation cell are denied the right to send letters to private persons. However, it follows from the former wording of Section 88 of the Regulation No. 423 and Section 74 (1) of the Code that the present wording of Section 88 of the Regulation No. 423 prohibits a person sending letters to private persons. Therefore it can be concluded that, in fact, these are the words “except for sending letters to private persons” of the present wording of Section 88 of the Regulation No. 423 that prohibit a convicted persons held in disciplinary punishment isolation cell sending letters to private persons.

**Consequently, the words “to send letters to private persons” of Section 74 (1) of the Code and the words “except for sending letters to private persons” of Section 88 of the Regulation no. 423 restrict the rights of the Applicant established in Article 96 of the Satversme.**

13. The rights of persons enshrined in Article 96 of the Satversme are not absolute. Based on Article 116, these rights can be restricted if the restriction is established by law, it has a legitimate objective and is proportionate.

**In the case under review, there is no dispute whether the restriction included in Section 74 of the Code and Section 88 of the Regulation No. 423 has been established by law, whether it has a legitimate objective and is proportionate.**

14. According to Article 116 of the Satversme, the fundamental rights established in Article 96 of the Satversme may be subject to restrictions in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

Placing of a person in a disciplinary punishment isolation cell has a legitimate objective, which is ensuring that a person would no more breach the regime of serving one's sentence and ensuring good order and security in a place of deprivation of liberty. As the Constitutional Court has concluded, restrictions of the rights of a convicted person established for a certain period of time when the person is held in a disciplinary punishment isolation cell should also be oriented towards execution of penalty and ensuring of the regime for executing penalty (*see: Judgment of 6 February 2006 by the Constitutional Court in the case No. 2005-17-01*,

Section 70 of the Code provides that a convicted person can be punished for non-observance of the requirements of regime of serving one's sentence. Placing in a disciplinary punishment isolation cell is one of the greatest punishments that can be inflicted to a convicted person for gross or systematic offences of the regime of serving one's sentence, and this is related not only with separation of a person from other convicted persons, but also other restrictions of rights, including the prohibition to send letters to private persons. As it follows from Section 70 (4) and (5) of the Code, gross and systematic offences of the regime of serving one's sentence are offences that considerably hamper observance of the rights and ensuring of security of other convicted persons and employees of the place of deprivation of liberty, as well as a good order in the place of deprivation of liberty.

As the Constitutional Court has already concluded, the aim of such additional restrictions to disciplinary punishment is the necessity of guaranteeing discipline and order at the institutions of deprivation of liberty (*see: Judgment of 6 February 2006 by the Constitutional Court in the case no. 2005-17-01, Para 6 and Judgment of 7 October 2009 in the case No. 2009-05-01, Para 14*). The prohibition to send letters to private persons shall be regarded as such restriction of rights, the objective of which is to prevent repetitive crimes and thus guarantee good order and security in the place of deprivation of liberty.

The European Prison Rules were adopted to provide the possibility to the Member states of the Council of Europe to guide themselves by the principles included in their legal acts and practice. Although the formal status of the Regulations is to recommend guidelines to the administrations of imprisonment places, they charge the Member States, which have adopted the Regulations with strict moral and political duties” (*see: Judgment of 19 December 2001 by the Constitutional Court in the case No. 2001-05-03, Para 6 of the Concluding Part and Judgment of 21 October 2008 in the case No. 2008-02-01, Para 9.1*) Article 24.2 of the European Prison Rules provides among the rest things that communication with family members and other persons may be subject to restrictions and monitoring necessary for the maintenance of good order, safety and security.

It is not possible to agree with the opinion of the Ombudsman that the prohibition to send letters to private persons does not have any of the legitimate objectives indicated in Article 116 of the Satversme. The aim of such prohibition is to guarantee order and safety in a place of deprivation of liberty and thus to protect security of the society.

**Consequently, the prohibition to send letters to private person does have a legitimate objective – ensuring of the regime of serving one’s sentence in places of deprivation of liberty and security of the society.**

**15.** Holding of a person in a place of deprivation of liberty and regime of serving one’s sentence is related with restriction of the rights of a person. If a convicted person breaches the regime of serving the sentence, the punishment inflicted

and all supplementary restrictions should be of the nature preventing repetitive offences of the regime of serving one's sentence.

According to the Constitutional Court, the restriction of right that includes a prohibition to send letters to private persons is appropriate for reaching the legitimate objective. The above mentioned restriction makes a convicted persons understand the unacceptable character of his or her activities and prevent the convicted person from breaching the regime for serving the sentence. The Saeima has also indicated that, when holding a person in a disciplinary punishment isolation cell, it is only logical and self-evident to restrict person's communication with private persons.

**Consequently, the prohibition to send letters to private persons is appropriate for reaching the legitimate objective.**

**16.** To ensure discipline and good order in a place of deprivation of liberty and to punish a person for breaching the regime of the place of deprivation of liberty, it is necessary to provide for certain restrictions of rights. Taking into account the fact that a punishment, namely, holding of a person in a disciplinary punishment isolation cell can be inflicted only in the case of gross or systematic offences of the regime of serving one's sentence; moreover, additional restrictions can be provided for convicted persons held in a disciplinary punishment isolation cell. According to the opinion of the Constitutional Court, the prohibition to send letters to private persons is one of such supplementary prohibitions.

Article 60 of the European Prison Rules provides for the main principles that should be observed when inflicting punishment for a convicted person in the case of disciplinary offence. It follows from Article 60 (4) of the European Prison Rules that punishment inflicted to a convicted person for disciplinary offences shall not include a total prohibition on family contact.

Consequently, it is possible to conclude that communication with family and relatives can be restricted and such restriction shall be regarded as proportional provided that the convicted person is provided with the minimum level of communication. Therefore the Constitutional Court must establish whether the normative acts ensure a convicted person held in disciplinary punishment isolation cell with the minimum communication level with his or her family members.

17. The prohibition to send letters to private persons and the only restriction of the rights that applies to possibilities of a convicted person held in disciplinary punishment isolation cell to communicate with family members. The opinion of the Applicant and that of the Latvian Prison Administration that a convicted person held in disciplinary punishment isolation cell is denied any communication with the family is ungrounded.

Section 74 of the Code provides for restrictions of the rights that can be applied to convicted persons held in a disciplinary punishment isolation cell. The prohibition of having visits and the prohibition to send letters to private persons are regarded as restriction of the rights restricting the possibilities of a person to communicate with his or her family or other persons. It has not been indicated in the abovementioned norm that a convicted person is denied the right to use other forms of communication.

The Contested Norm prohibits a contested person held in a disciplinary punishment isolation cell to send letters to private persons; however it does not deny the right to receive letters sent by private persons. Convicted persons held in disciplinary punishment isolation cells have the right established in Section 49 (1) of the Code, namely, the right to receive letters without restriction to the amount.

The general legal regulation regarding telegrams and telephone conversations shall also apply to convicted persons held in a disciplinary punishment isolation cell. Namely, under Section 49 (1) of the Code, convicted persons have the right to send, and receive telegrams without restriction to their amount, whilst Section 49 (6) of the Code provides that convicted persons have the right to have telephone conversations at their expense or at the expense of the addressee in the amount compliant with the amount established at the particular place of deprivation of liberty and level of the regime of serving one's sentence.

After adoption of the Code, technical possibilities and ways of sending telegrams have changed. Initially sending of telegrams was ensured by the administration of the place of deprivation of liberty, but not this service is provided by the State joint stock company "*Latvijas Pasts*". For a person to be able to send a telegram, it should dictate the text by telephone and to pay for the respective service. Price for sending a telegram depends on the number of words and urgency of the

telegram. Consequently, it is technically possible to send telegrams. A convicted person, when held in a disciplinary punishment isolation cell, can exercise the rights established in normative acts and send telegrams. Use of a telephone for sending a telegram shall not be regarded as a telephone conversation in the meaning of the Code.

The Constitutional Court agrees with the Saeima that holding of a person in a disciplinary punishment isolation cell is a short term punishment. Therefore the prohibition to communicate with family members by letters is applied for a short term. Moreover, convicted persons held in a disciplinary punishment isolation cell have the right to send and receive telegrams. The above mentioned convicted persons also have the right to receive letters and to have telephone conversations at the amount established by law.

**Consequently, it is possible to conclude that normative acts ensure convicted persons with the minimum communication level with family members even if the convicts are held in a disciplinary punishment isolation cell. When prohibiting a person held in disciplinary punishment isolation cell to send letters to private persons, the State has not breached the duty that follows from Article 96 of the Satversme.**

### **The Constitutional Court**

Based on Article 30 – 32 of the Constitutional Court Law

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

**1. Section 74 (1) of the Latvian Penalty Execution code and Section 88 of 30 May 2006 Cabinet of Ministers Regulations No. 423 “Regulations Regarding Internal Rules of Order of Places of Deprivation of Liberty” (the wording of 12 May 2009 Cabinet of Ministers Regulations No. 413) comply with Article 96 and Article 104 of the Satversme of the Republic of Latvia.**

**2. Proceedings in the case regarding compliance of Section 88 of 30 May 2006 Cabinet of Ministers Regulations No. 423 “Regulations Regarding Internal**

**Rules of Order of Places of Deprivation of Liberty” (the wording of 3 June 2006)  
with Article 104 of the Satversme shall be terminated.**

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