THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, April 29, 2008

in case No. 2007-25-01

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

having regard to the constitutional application of Māris Pauders,

based on Article 85 of the Satversme (Constitution) of the Republic of Latvia and Item 1 of Article 16, Item 11 of the first part of Article 17, Articles 19.^{2} and 28.^{1} of the Constitutional Court Law,

on April 1, 2008 in the Court Session examined the case in written proceedings

"On Compliance of Para 3 of the Transitional Provisions of the Criminal Procedure Law with Article 91 of the Satversme (Constitution) of the Republic of Latvia"

The Constitutional Court has established:

1. On April 25, 2005, the Saeima of the Republic of Latvia (hereinafter – the Saeima) passed the Criminal Procedure Law (hereinafter also – CPL), which came into force on October 1, 2005. By adopting this law, the legislator has conceptually changed the legal regulation of criminal procedure. Before October 1, 2005, the

procedure in criminal cases was regulated by the Criminal Procedure Code of Latvia (hereinafter also – CPC).

In the Criminal Procedure Code, no precise maximum term for termination of pre-trial investigation has been established. Article 128.2 of the CPC provided that criminal prosecution in pre-trial investigation shall be terminated within two months, however it established the right of the head of a prosecutor's office to prolong this term without limiting the number of these times. Whereas, the first part of Article 389 of the CPL provides that from the moment when a person who has the right to defence or a person, whose rights to perform activities with his or her property are restricted by procedural actions, is involved in pre-trial process, pre-trial procedure shall be terminated or all procedural measures and restriction of rights shall be cancelled in relation to property: for a criminal offence – within six month, for less serious crimes – within nine months, for a serious crime – within twelve months and for especially serious crime – within the period of eighteen months. According to the second part of Article 389 of the CPL, a judge has the right to prolong the terms established in the first part of the same article for investigation of serious or especially serious crimes by six more months, but not more than three months per each prolongation, if the procedure driver has avoided any delay or sooner termination of the procedure has not been possible due to its particular level of complexity.

Para 3 of the Transitional Provisions of the Criminal Procedure Law provides: "In criminal cases that have been initiated before coming into force of this Law, the term of pre-trial process shall be calculated form the date of coming into force of this Law" (hereinafter – the Contested Norm). Consequently, according to the Contested Norm, in criminal cases that have been initiated before the date of coming into force of the Criminal Procedure Law the term of pre-trial procedure shall be calculated from October 1, 2005.

2. The applicant Māris Pauders (hereinafter – the Applicant) asks to recognize the Contested Norm as non-compliant with Article 91 of the Satversme of the Republic of Latvia (hereinafter – the Satversme) because it places persons, who have conferred the right to defence in accordance with the norms of the Criminal Procedure Code, and persons, who have been conferred the rights to defence at the

moment when the Criminal Procedure Law came into force, into unequal situations. The terms established only in Article 389 of the CPL are applicable to the latter. The terms established in Article 389 of the CPL are also applied to the Applicant who was conferred the rights to defence when the Criminal Procedure Code was still effective, however these terms do not envisage the period before coming into force of the Criminal Procedure Law.

2.1. On May 21, 2004, the Applicant was held criminally liable by the decision of the public prosecutor of the Department of Investigation of Especially Important Cases of the Criminal Law Department of the Prosecutor General Office of the Republic of Latvia for a criminal delinquency that can be qualified as an especially serious crime. On September 6, 2007, the driver of the procedure passed a new decision regarding holding the Applicant criminally liable by introducing amendments to the legal qualification of the criminal delinquency. However, also according to this decision, the Applicant was held criminally liable for an especially serious crime.

From May 21, 2004 to August 6, 2004, the security measure – police supervision – was applied to the Applicant, but from August 6, 2004 to October 24, 2005 – signature for unchanging the place of residence. However, from April 14, 2007 to June 11, 207 and from June 22, 2007, the security measure – announcing of the address of receiving consignments and prohibition to leave the State – was applied to the Applicant. From June 2, 2004, the property of the Applicant was arrested by means of a decision by the public prosecutor.

On January 17, 2007, the advocate of the Applicant submitted an application to the Department of Investigation of Especially Important Cases of the Criminal Law Department of the Prosecutor General Office of the Republic of Latvia by asking to terminate the criminal procedure against the Applicant or to remove restrictions applied to him. The application was substantiated by the fact that the criminal procedure has evidently been delayed, the basic rights of the person are being restricted and no further restriction of the rights of the persons is admissible, because thus the procedural term established in Item 4 of the first part of Article 389 of the CPL is being violated. In the decision of January 24, 2007 regarding rejection of the application, the public prosecutor indicates that no term of pre-trial investigation has been violated because, according to the Contested Norm, pre-trial procedure in the

case under review shall be calculated not from May 21, 2004, as it was considered by the Applicant, but from October 1, 2005.

The advocate of the Applicant submitted a reply complaint to the general prosecutor of the Department of Investigation of Especially Important Cases of the Criminal Law Department of the Prosecutor General Office. It has been indicated in the complaint that the Contested Norm places persons, who have conferred the right to defence in accordance with the norms of the Criminal Procedure Code, and persons, who have been conferred the rights to defence at the moment when the Criminal Procedure Law came into force, into unequal situations. Simultaneously Article 91 of the Satversme and international legal norms are also being violated. The general prosecutor of the Department rejected the abovementioned complaint by the decision of July 10, 2007 based on the same arguments that were indicated in the decision of January 24, 2007.

By means of this decision, the advocate of the Applicant submitted a complaint to the general prosecutor of the Criminal Law Department of the Prosecutor General Office on July 18, 2007. When assessing this complaint, the deputy prosecutor of the Department passed a decision on July 20, 2007 to recognize the decisions of January 24, 2007 and July 10, 2007 by the public prosecutor as lawful and grounded.

2.2. The Applicant indicates that the procedural regulation established in the Criminal Procedure Law is more favourable for a person if compared to what has been established in the Criminal Procedure Law. The Contested Norm that prohibits applying the more favourable regulation with a retrospective effect has no legitimate objective. The Contested Norm is ungrounded, it is not necessary in a democratic society and it is not proportionate.

If the Contested Norm did not exist, no security measures, regarding which the decisions were issues on April 14, August, 5 and August 27, 2007, could be applied to the Applicant because the maximum term of restriction established by Article 389 of the CPL for cases of the respective category. Establishment of such restrictions for a time period that exceeds two years to those persons who have been conferred the right to defence after coming into force of the Criminal Procedure Law would not be possible and it would be regarded as an open violation of rights. Moreover, unlike persons, against which a criminal procedure has been initiated after coming into force

of the Criminal Procedure Law, the Applicant may not exercise the rights established in Article 70 and Item 18 of the first part of Article 66 of the CPL – the rights to submit an application regarding termination of a criminal procedure if the term of pre-trial procedure established in the Law has been violated.

The objective of the Criminal Procedure Law and that of the Criminal Procedure Code is the same, namely, to establish the procedural order for investigation of criminal delinquencies. Respectively, the Criminal Procedure Law is the "legal successor" of the rights of the Criminal Procedure Code. The notion of an accused is identical in both laws. The content of the rights and duties of an accused is similar. Consequently, persons, against whom pre-trial procedure has been initiated in accordance with the norms of the Criminal Procedure Code, enjoy equal in according to certain criteria comparable conditions if compared to those persons, against whom such procedure has been initiated according to the norms of the Criminal Procedure Law.

The Applicant indicates that according to the annotation of the draft Law of the "Criminal Procedure Law", a sustained criminal prosecution of a person and, moreover, holding in captivity without ā verdict of guilty is a serious restriction of human rights. The Contested Norm establishes such situation that this is the fault of the accused having committed a criminal delinquency that the procedure was initiated at the time when the Criminal Procedure Code was still effective, rather than at the time when the Criminal Procedure Law has come into force. The time period when a person has been suspected during validity of the Criminal Procedure Code and procedural coercive methods have been applied to him or her was neglected and deleted without reason. The one objective that the State has tried to achieve by means of the Contested Norm was not to protect democratic values and fulfil international liabilities, but to justify procedures of investigation against persons by establishing new procedural terms in the cases, wherein investigation should otherwise be terminated.

Consequently, the restriction established by the legislator that provides for calculation of the term of pre-trial procedure only form the date of coming into force of the Criminal Procedure Law is not only unnecessary but it also hampers reaching of

the legitimate objective of the Criminal Procedure Law – observation of human rights. The Contested Norm may not be regarded as an open discrimination.

Discrimination and unequal attitude in the abovementioned case can be established because it is possible to observe a different treatment in equal situations. This is ungrounded un unjustified objectively, moreover there lacks proportionality between the objective to be reached and means applied. The principle of equality and prohibition of discrimination established in Article 91 of the Satversme are regarded as categories that are impossible to be subjected to any restrictions. Moreover, in this case there exists a conflict between the defined legitimate objective put forth by the legislator when adopting the Criminal Procedure Law and the Contested Norm.

The Contested Norm is not related to the entire society, but it is applicable to a particular part of the society – persons who have been conferred the rights to defence during the period when the Criminal Procedure Law was still effective. In the case under review, a direct discrimination is evident, namely, attitude towards one person is less favourable than that to another in an analogous (comparable) situation. A direct discrimination can not be justified. It is necessary to observe the presumption of innocence and to take into account possible bringing of a person in not guilty in the future, moreover suspicion of the State against a person may not be infinite. A commensurate time period for "implementation of suspicion" is established in Article 389 of the CPL and it is inadmissible to prolong this time period on an ungrounded basis for those persons who have been conferred the rights to defence during the validity of the Criminal Procedure Code.

3. The institution that passed the contested act – the Saeima – does not agree with the viewpoint of the Applicant and it holds that the Contested Norm complies with a legal norm of a higher legal force. The Contested Norm is included in the Transitional Provisions and its objective is to ensure a lenient transition from the old area of regulation (the Criminal Procedure Code) to the new legal regulation (the Criminal Procedure Law).

The Transitional Provisions of the Criminal Procedure Law provides for an order of transition in the situations when the legal regulation of the institution of the criminal procedure is being conceptually changed. The Contested Norm establishes the

order how to act in the cases when a criminal case has been initiated before October 1, 2005, but pre-trial procedure has not yet been terminated.

Since the term of pre-trial investigation has not been established in the Criminal Procedure Code, there existed a possibility that a criminal case could be investigated up to the limit. However, Article 389 of the CPL establishes the terms of pre-trial procedure. Since the Law now provides for the terms of pre-trial procedure, the status of persons to whom the Contested Norm was applied has ameliorated. Therefore there is no reason to consider that less favourable norms could be applied to persons who have acquired the status of a suspect or an accused according to the norms of the Criminal Procedure Code if compared to persons who have acquired such status according to the new Law. It would be reasonable to talk of a less favourable attitude that would come into conflict with Article 91 of the Satversme only in the case if it would have been provided in the Law that the previous area of regulation shall be applied to criminal cases who have been initiated before coming into force of the new law, i.e. the norm regarding the term of pre-trial procedure would not at all be applied.

If the legislator would have established that the term of pre-trial procedure in the cases that have been initiated before coming into force of the Criminal Procedure Law, shall be calculated from the date when the decision regarding holding a persons criminally liable, then it would turn out that in many cases the term would have already has expired or would expire in the following days or weeks, and hence an absurd situation would be formed, which would cause chaos in functioning of pre-trial investigation institutions and a prosecutor's office. It would not be reasonable to terminate a criminal case only because the legal regulation of the criminal procedure has changed. Hence the rights of other persons – victims – would be violated and no fair solution of criminal law relations would be found.

The Saeima indicates that in this case, if the Contested Norm did not exist, the terms of pre-trial procedure established in the Criminal Procedure Law would in practice be automatically applied to non-terminated criminal cases and they would be calculated form the date of coming into force of the Law. Consequently, the Contested Norm shall be regarded as that of a specifying character and it does not *per se* provide for any restriction of rights.

The term of pre-trial procedure is applied only from October 1, 2005 and equally to all persons. The Contested Norm does not provide for a different attitude towards any group or persons and therefore it complies with Article 91 of the Satversme.

There is neither any reason to consider that there exist equal factual and legal circumstances in the cases when the same criminal delinquency has been committed before and after coming into force of the Criminal Procedure Law. Similarly, if several equal delinquencies have been committed, the body of circumstances of commitment thereof has been different in each particular case, and this influences the term of investigation of the particular delinquency.

It is necessary to take into consideration the fact that the Contested Provision in fact has already been implemented, namely, two years have passed since October 1, 2005. Moreover, cancelling of the Contested Provision with a retrospective effect would cause non-predictable consequences also in relation to the defendant.

4. The Ministry of Justice holds that the Contested Provision complies with Article 91 of the Satversme.

When analysing whether the persons who have been held criminally liable according to the order established in the Criminal Procedure Code enjoy equal and comparable conditions if compared with the persons who have been held criminally liable according to the order established in the Criminal Procedure Law, the Ministry of Justice indicates that according to the Criminal Procedure Law the public prosecutor initiates criminal prosecution in the order similar to that established in the Criminal Procedure Code. Nor the Criminal Procedure Code, neither the Criminal Procedure Law establishes the terms of criminal prosecution, however they may not exceed the maximum term of pre-trial procedure, unlike it has been established in the Criminal Procedure Code. Since pre-trial criminal procedure established in the Criminal Procedure Law is a new institution of law, the notion used in the Criminal Procedure Code, "the term of criminal prosecution" is not the same as the notion used in the Criminal Procedure Law "the term of pre-trial procedure".

Taking into account the aforesaid, the Ministry of Justice holds that, when assessing the area of regulation regarding the terms, it is impossible to compare

persons who have been held criminally liable according to the order established in the Criminal Procedure Law and person who have been held criminally liable according to the Criminal Procedure Law, because the maximum terms of criminal prosecution have not been established in the Criminal Procedure Code.

The Contested Norm has been elaborated in order to ensure such a claim of a law-governed State as an overall impact of the Law on all persons and an equal attitude towards them without any privileges. One of the objectives of elaboration of the Criminal Procedure Law was to eliminate restrictions of human rights in order to prevent a sustained criminal prosecution against persons, especially if held in captivity without a verdict of guilty. However, the Contested Norm, after adoption of the Law, has regulated a transition from the previous legal regulation to the new one. The legislator has objectively and reasonably ensures this transition. Moreover, the Contested Norm has been adopted in order to ensure the principle of proportionality and the norms of the Criminal Procedure Law that are more favourable for persons, would be applied also to those persons, against whom criminal prosecution has been initiated according to the Criminal Procedure Law.

The Contested Provision shall be regarded as that of a specifying character, explaining the situation and that does not *per se* provide for any restriction of rights. Consequently, the Contested Norm has a legitimate objective, namely, to ensure a proportionate transition from the previous legal regulation to the new one.

5. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that the legislator, when adopting the Contested Norm, has not referred to any particular group of person by any particular feature or inadmissible criteria. It can be concluded from the aforesaid that in this case there is no reason to analyse possible violation of the principle of prohibition of discrimination, but it is necessary to analyze compliance of the Contested Norm with the first sentence of Article 91 of the Satversme.

The Ombudsman holds that a different attitude can be established between the persons, regarding whose delinquencies criminal cases still were in pre-trial procedure, however they were initiated before October 1, 2005 and persons, regarding whose delinquencies were initiated after coming into force of the Criminal Procedure Law.

Only an initiated criminal case and non-terminated, up to October 1, 2005, pre-trial procedure is mentioned in the Contested Norm as a criterion for applying pre-trial procedure. In this case an initiated criminal case (initiated criminal procedure) and the procedural stage of pre-trial procedure (investigation) in the time period after October 1, 2005 can be regarded as a unifying characteristic feature of groups of persons.

By providing in the Criminal Procedure Law for terminated pre-trial procedures also for those criminal cases that were initiated in accordance with the Criminal Procedure Code and were not jet submitted to the court, the legislator has presumed that this group of persons enjoy comparable conditions from October 1, 2005 if compared to those persons, whose pre-trial procedure was initiated after coming into force of the Criminal Procedure Law.

The legislator, when passing the legal norm, must always verify its impact on existent legal norms. In a democratic and law-governed State, when making amendments to normative acts, the institution that passes the act is obligated to consider a lenient transition to the new legal regulation. Therefore the objective of the Contested Norm – to ensure a lenient transition to the new regulation regarding criminal procedure – can be regarded as legitimate.

As to compliance of the Contested Norm with the criteria of proportionality, the Ombudsman indicates that establishment of the terms fro those pre-trial procedures that were initiated in accordance with the Criminal Procedure Code do not restrict but rather strengthens the rights of a person. The persons, against whom criminal cases were initiated before October 1, 2005 and pre-trial procedure directed towards whom was proceeded after this date, are interested in coming into force of the new regulation in the soonest time possible. Moreover, these persons have the right to establishment and calculation of the same pre-trial procedure if compared to the persons, against whom criminal cases were initiated according to the Criminal Procedure Law. The Contested Norm is appropriate for reaching the legitimate objective, it improves legal status of persons and is proportionate.

Compliance of the Contested Norm with the first sentence of Article 91 of the Satversme shall be assess in conjunction with the principle of legal certainty. A terminated pre-trial procedure in Latvia is a new institution. The fact that the Criminal Procedure Code did not establish the terms for different activities of criminal

procedure does not means that the Criminal Procedure Law has a retrospective effect regarding the issues that have not been regulated in the Criminal Procedure Code. There is no reason to consider that persons, against which criminal procedures were initiated before the date of coming into force of the Criminal Procedure Law and the criminal procedure continued after October 1, 2005 have subjective rights to rely on the retrospective effect of the new regulation. Moreover, by coming into force of the new regulation the legal status of these persons has ameliorated. By means of the new regulation, a transparent system has been introduced and persons have been transferred the rights to rely on the fact that pre-trial procedure shall be terminated after the expiry of a certain term or all procedural coercive methods and restrictions regarding property shall be cancelled. Hence the Contested Norm complies with the principle of legal certainty.

6. The Prosecutor General Office of the Republic of Latvia (hereinafter – the Prosecutor General Office) indicates that the Criminal Procedure Code did not establish the terms of application of investigation and security measures for criminal cases (except for confinement and house arrest).

The status of the defendant before coming into force of the Criminal Procedure Law has ameliorated, because a precise term of pre-trial procedure has been established in accordance with the qualification of delinquencies established in the Criminal Law.

Since a completely new area of regulation has been established in the Criminal Procedure Law in relation to the terms of pre-trial procedure, the Prosecutor General Office holds that it is justifiably to start calculating these terms from the date of coming into force of the Criminal Procedure Law, namely, from October 1, 2005. Moreover, these terms apply equally to app persons in Latvia without any discrimination. A contrary situation would form if the legislator would have been established in the Transitional Provisions that the terms of pre-trial procedure established in the Criminal Procedure Law shall not be applied to criminal cases that have been initiated before coming into force of the Criminal Procedure Law. This would cause a situation where no terms of pre-trial procedure would be established for certain criminal procedures (certain suspects or respondents).

Moreover, the terms of pre-trial procedure established in Article 389 of the CPL are related to the procedural position of a person, namely, the procedural terms shall be calculated from the moment when a person acquires any of the statuses of criminal procedure. Taking into consideration the fact that the Criminal Procedure Code did not provide for such participant of a procedure as a person, against whom a criminal procedure is initiated, it would be hard, after coming into force of the Criminal Procedure Law, to calculate the terms of pre-trial procedure for cases initiated before coming into force of the Criminal Procedure Law.

The Constitutional Court has concluded:

7. Article 91 of the Satversme provides: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realized without discrimination of any kind." It includes two mutually related principles: the principle of equality – in the first sentence and the principle of prohibition of discrimination – in the second sentence (*see: Judgment of September 14, 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9*).

7.1. It is indicated in the constitutional complaint that the Contested Norm violates not only the principle of equality included in the first sentence of Article 91 of the Satversme, but also the principle of prohibition of discrimination included in the second sentence thereof.

In the case of discrimination a different attitude is based on certain prohibited criteria (*see: Levits E. Par tiesiskās vienlīdzības principu // Latvijas Vēstnesis, May 8, 2003, No. 68*). Such criteria are, for instance, gender, race, nationality, religion, affiliation to a certain social group. When applying the terms established in the Criminal Procedure to the persons who have been conferred the rights to defence according to the order established in the Criminal Procedure Code, the legislator has not provided for a different attitude based on a prohibited criterion. The Ombudsman, too, indicates that the legislator, by means of the Contested Norm, has not singled out any group of persons according to prohibited criteria.

Consequently, in the case under review, the Contested Norm shall be assessed in the context of the principle of equality, not in that of the principle of prohibition of discrimination.

7.2. The principle of legal security prohibits State institutions adopting norms that would admit, without reasonable basis, a different attitude towards persons who enjoy equal and comparable conditions (*see: Judgment of April 3, 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Concluding Part*).

The task of the principle of equality is to ensure that the demand of the law-governed State of an all-embracing influence of the law on all persons, as well as securing of applying the law without any privileges is realized. It guarantees complete effect of the law, objectivity and impassiveness of its application as well as the fact that nobody is allowed not to observe the instructions of the law (*see: Judgment of September 14, 2005 by the Constitutional Court in the case No. 05-02-0106, Para 91.*). However, such unity of legal order does not mean that the rights of persons should be equal. Equality permits a differentiated approach if it is justifiable in a democratic society (*see: Judgment of June 26, 2001 by the Constitutional Court in the case No. 2001-02-0106, Para 4 of the Concluding Part*).

Consequenty, the principle of equality permits and even requires a different attitude towards persons who enjoy different circumstances, as well as permits a different attitute towards persons who enjoy equal circumstances, if this has an objective and reasonable grounds (*see: Judgment of April 3, 2001 by the Constitutional Court in the case No. 2000-07-0409, Para 1 of the Concluding Part*).

7.3. In order to assess whether the Contested Norm complies with Article 91 of the Satversme, it is necessary to find out:

first of all, whether there are persons (grounps of persons) who enjoy equal and comparable conditions;

second, whether the Contested Norm provides for an equal or different attitute towards these persons;

third, whether such attitute has an objective and reasonable grounds.

A different attitute has no objective and reasonable grounds if it has no legitimate objective or if it is no proportionate (commensurate) relation between the measures selected and objectives set (*see: Judgment of December 23, 2002 by the Constitutional Court in the case No. 2002-15-01, Para 3 of the Concluding Part*).

8. In order to find out what persons or groups of persons enjoy, if at all, equal and, according to certain criteria, comparable conditions, it is necessary to establish the distinguishing trait of such group. (*see: Judgment of June 14, 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14*).

8.1. The Contested Norm provides for the order, according to which the terms of pre-trial procedures are established for criminal cases that have been initiated before coming into force of the Criminal Procedure Law, namely, before October 10, 2005. The Contested Provision establishes the date, from which it is possible to start calculating the term of pre-trial procedure in criminal cases, however it does not regulate the terms as such. The order of calculation of the terms and duration thereof shall be established by Article 389 of the CPL. Depending on the level of seriousness of a criminal delinquency, Article 389 of the CPL provides for different maximum terms, within which pre-trial process shall be terminated or all procedural coercive measures and restriction regarding property shall be cancelled. Therefore the Contested Norm shall be assessed in conjunction with Article 389 of the CPL in order to find out what persons enjoy equal or different circumstances.

8.2. Since the Contested Norm apply the terms of pre-trial procedure established in the Criminal Procedure Law also to the criminal cases that have been initiated before coming into force of the Criminal Procedure Law, it is necessary to find out what procedural state regulated in the Criminal Procedure Code shall be equalized to pre-trial procedure established in the Criminal Procedure Law.

The Criminal Procedure Code did not provide for the notion of a criminal procedure, but it provided for pre-trial investigation – a stage of the procedure that is not identical to pre-trial procedure regulated in the Criminal Procedure Law, however they are similar as to their content and objective. The content of pre-trial procedure is established in Article 384 of the CPL, according to which it is necessary to find out during pre-trial procedure by carrying out investigation and criminal prosecution: 1) whether a criminal delinquency has been committed, 2) the person that would be held criminally liable, 3) whether there is any reason for termination of the criminal procedure or submission of it before the court. The Criminal Procedure Code did not *expressis verbis* establish such tasks for the stage of pre-trial investigation, however the tasks established by the Criminal Procedure Code for pre-trial investigation were

similar to those that were established in the Criminal Procedure Law effective at that time.

Initiation of pre-trial procedure and pre-trial investigation in the context of both, the Criminal Procedure Code and the Criminal Procedure Law are regulated on an analogous basis. According to Article 372 of the CPL, a criminal procedure shall be initiated by a respective decision made by a procedurally authorized official. A procedural activity that is similar to initiation of a criminal procedure is initiation of a criminal case established in Article 113 of the CPC. Although initiation of a criminal case according to the Criminal Procedure code was regarded as an independent state of a criminal procedure and it could last for an indefinite period of time, it was concluded by a certain decision regarding initiation of a criminal case. According to Article 114 of the CPC, particularly after the decision regarding initiation of a criminal case pre-trial investigation was initiated.

The ways of terminating pre-trial investigation provided for in the Criminal Process Code and that of pre-trial procedure provided for in the Criminal Procedure Law are analogous. Article 208 of he CPC provided that pre-trial investigation shall be terminated by issuing an indictment (and then submitting the criminal case to the court) passing a decision regarding termination of the case or passing a decision regarding submission of the case to the court for application of coercive methods of a medical character. According to Article 411 of the CPL, a criminal procedure carried out according to a general order shall be terminated by forwarding the case to the court, namely, by passing a decision regarding submission of the criminal case to the court or by passing a decision regarding termination of the criminal procedure, as well as by passing a decision and submitting a criminal procedure to the court for determination of coercive measures of a medical nature.

As to the content and objectives, the stages of pre-trial procedure and pre-trial investigation are also analogous. The Criminal Procedure Law provides for two states of pre-trial procedure: investigation and criminal prosecution. However, according to the Criminal Procedure Code, the stages of pre-trial investigation were inquiries and criminal prosecution.

It also follows from the Contested Norm that pre-trial investigation and pre-trial procedure are equal legal institutions, because it is indicated therein that in criminal

cases that are initiated before October 1, 2005, there are the terms of pre-trial procedure established, like for the criminal procedures that have been initiated in accordance with the provisions of the Criminal Procedure Law. Consequently, in the cases when pre-trial investigation was not yet finished before coming into force of the Criminal Procedure Law, pre-trial procedure is a continuation of pre-trial investigation. The Saeima has neither indicated in its reply that the Contested Norm prescribes how to act in the cases when a criminal case has been initiated before October 1, 2005 but the procedure thereof has not yet been terminated.

Consequently, the stage of the procedure regulated in the Criminal Procedure Core – pre-trial investigation – and the state of the procedure provided for in the Criminal Procedure Law – pre-trial procedure – are institutions of criminal procedure law, the content and objectives of which are equal.

8.3. The Criminal Procedure Code provided for the terms of pre-trial investigation. Only Article 128.2 of the CPC provided that criminal prosecution in pre-trial investigation shall be terminated within two months, except for cases when the respective term is being prolonged. However the Criminal Procedure Code did not provide for restriction for prolonging of the term of criminal prosecution. However Article 389 of the CPL provides that the term, within which pre-trial procedure shall be terminated or all procedural coercive methods and restriction of rights in relation to property shall be cancelled, may begin at different points of time – at the moment when a person who has been conferred the rights to defence is involved in pre-trial procedure, as well as at the moment when the rights of persons to deal with the property are restricted by means of procedural measures during pre-trial procedure, namely, when the property of a person is arrested in accordance with Article 361 of the CPL.

On May 21, 2004, the Applicant was held criminally liable and hence he was conferred the rights to defence in accordance with Article 18 of the CPC. The property of the Applicant was arrested later – on June 2, 2004. Since the Applicant was involved in the criminal procedure at the moment when he was conferred the rights to defence, not at the moment when his property was arrested, it is necessary to find out whether the legal status of those persons who have been conferred the rights to defence

are regulated equally in the Criminal Procedure Law and the Criminal Procedure Code.

The Criminal Procedure Law, if compared to the Criminal Procedure Code, provides for such procedural status, the persons involved wherein shall be conferred the rights to defence. Designations of the two procedural statuses are identical in both, the Criminal Procedure Law and the Criminal Procedure Code, namely, a suspect and a respondent. A person, against whom criminal procedural activities have been forwarded during the time when the Criminal Procedure Code was valid, the rights to defence have been conferred later, if compared to the provisions of the effective Criminal Procedure Law. If there exists a serious possibility that the persons has committed the criminal delinquency under investigation, the person was conferred the right in accordance with the third part of Article 61 of the CPL – at the moment when he or she was involved in procedural activities or when the information regarding initiation of a criminal procedure against this person has been made public. However, Article 121 of the CPC provided that the rights of a person to defence shall be conferred at the moment when a person becomes a suspect, namely, at the moment when a person is detained or a security measure is applied before prosecution.

However, the differences between the regulations of the two laws are not that substantial in order to state that the persons who have been conferred the rights to defence according to the order established in the Criminal Procedure Code and the persons who have been conferred the rights to defence according to the Criminal procedure Law enjoy equal circumstances. The rights that have been guaranteed by law to the persons who have been conferred the rights to defence according to the Criminal Procedure Law are almost identical to those established in the Criminal Procedure Code. Also the procedural status of persons who have been conferred the rights to defence, such as a detainee, a suspect and a defendant, has in both cases been regulated very similarly.

Although Article 66 of the CPL provides for a more detailed rights of a suspect, if compared to the Criminal Procedure Code, Article 66 of the CPL and Article 121 of the CPC provide that a suspect *inter alia* has the rights to invite an advocate, appeal against the action of the official authorized to carry out a criminal procedure (in the Criminal Procedure Code – that of the performed of an investigation or a public

prosecutor), as well as to provide explanations and submit requests. As to the rights of the respondent, Article 70 of the CPL and Article 95 of the CPL provide that the respondent *inter alia* has the rights to an advocate, the rights to know what he or she has been charged with, provide explanations, submit requests, acquaint him or herself with materials of the criminal case, submit complaints regarding activities of the official authorized to carry out criminal procedure (in the Criminal Procedure Code – that of the performed of an investigation or a public prosecutor).

Consequently, the persons who have been conferred the rights to defence in accordance with the Criminal Procedure Code and the persons who have been conferred the rights in accordance with the Criminal Procedure Law, enjoy equal and comparable conditions.

9. The Constitutional Court must investigate whether the Contested Norm provides for an equal or a different attitude against persons who have been conferred the rights in accordance with the Criminal Procedure Code and the persons who have been conferred the rights in accordance with the Criminal Procedure Law.

The Contested Norm provides that both, in criminal cases that have been initiated before coming into force of the Criminal Procedure Law, as well as in the criminal procedures that have been initiated in accordance with the Criminal Procedure Law, the term of pre-trial procedure shall be calculated from October 1, 2005. Consequently, the Contested Norm *per se* provides for an equal attitude towards the abovementioned groups of persons.

However, it is necessary to take into consideration the fact that the Contested Norm provides only for the order, according to which the terms of pre-trial procedure shall be applied to criminal cases that have been initiated before coming into force of the Criminal Procedure Law, but it does not provide the very terms of pre-trial procedure and preconditions of setting in of them. As it has been indicated in Para 8.1 of this Judgment, the Contested Norm shall not be assessed separately from Article 389 of the CPL, which provides for the maximum term of pre-trial procedure or the term, within which all procedural coercive methods and all restrictions of the rights in relation to property shall be cancelled. It follows from the Contested Norm in

conjunction with Article 389 of the CPL that the attitude towards persons who enjoy equal conditions is yet different.

The maximum term of pre-trial procedure of restriction of the rights for a criminal procedure that has been initiated in accordance with the Criminal Procedure Law is established in Article 389 of the CPL. It can last up to 24 months in the case of a specially serious crime. However in the case if a criminal case has been initiated in accordance with the norms of the Criminal Procedure Code and the rights of a person have been restricted in the frameworks of this case (a security measure has been applied or property has been arrested), but pre-trial investigation was not terminated up to October 1, 2005, the abovementioned restriction of rights could last for more than 24 months, because the time period, within which the rights of a person have been restriction in accordance with the norms of the Criminal Procedure Code, was not included in the term of pre-trial investigation established in Article 389 of the CPL.

Taking into consideration the aforesaid, it is possible to conclude that the rights of persons to defence, including the rights to defence of the Applicant, which have been conferred in accordance with the Criminal Procedure Code, could have been restricted for a longer period of time, if compared to the rights of persons to defence, which have been conferred in accordance with the Criminal Procedure Law.

Consequently, the Contested Norm provides for a different attitude towards persons who have been conferred the rights to defence in accordance with the norms of the Criminal Procedure Code and in the criminal cases of whom pre-trial investigation has not been terminated up to October 1, 2005, and the persons who have been conferred the rights to defence in accordance with the Criminal Procedure Law.

10. In order to establish whether such different attitude has an objective and reasonable grounds, it is necessary to find out whether the Contested Norm has a legitimate objective.

In the context of Article 91 of the Satversme, the basis of a different attitude should contain "a reasonable ground" (*see: Levits E. Par tiesiskās vienlīdzības principu // Latvijas Vēstnesis, May 8, 2003, No. 68*). Also the doctrine of constitutional law recognizes that any reasonable consideration may serve as a reason for unequal

attitude in comparable situations. The task of the legislator is to establish legal situations, whereto one and the same legal consequences would be applied, if such attitude has a reasonable justification (*see: Jarass D., Pieroth B. Grundgesetz für die Bundesrepublik Deutschland. 8. Aufl. München: Verlag C.H.Beck, 2006, S. 99).* Consequently, in the context of Article 92 of the Satversme, the legitimate objectives are not only those mentioned in Article 116 of the Satversme, but any other reasonable objective.

The responsibility to present and justify the legitimate objective of the different treatment falls, during the proceedings of the Constitutional Court, first or all, upon the institution that has passed the contested act, in this case, the Saeima (*see: Judgment of October 18, 2007 by the Constitutional Court in the case No. 2007-03-01, Para 22.1*).

It is possible to agree to the viewpoint expressed in the reply of the Saeima that the objective of the Contested Norm, as well as that of the Transitional Provisions of the Criminal Procedure Law is to ensure a reasonable and balanced transition from the old regulation, namely, from the Criminal Procedure Code, to the new one – the Criminal Procedure Law. The Contested Norm ensures such transition because by adoption of the Criminal Procedure Law, such institution of law has been introduced as the terms of pre-trial procedure. By applying the restricted terms of pre-trial procedure provided for in the Criminal Procedure Law also to criminal cases that has been initiated before coming into force of the Law, the legislator provided for a reasonable transition from the old legal regulation to the new one.

By adopting the Contested Norm, the legislator has provided for a precise order, according to which developers of the procedure shall calculate the terms of pre-trial procedure in the abovementioned criminal cases. The Contested Norm in conjunction with Article 389 of the CPL provide for precise terms, within which pre-trial procedure shall be terminated or all procedural coercive methods and restrictions of the rights in relation to property shall be cancelled. The Contested Norm ensures foreseeability and legal security in termination of pre-trial procedure in criminal cases that have been initiated before coming into force of the Criminal Procedure Law.

Consequently, the different attitude caused by the Contested Norm has a legitimate objective, namely, to establish a reasonable transition form the old legal regulation to the new one.

11. Although the different attitude is justified, its legitimate objective must comply with the principle of proportionality.

In the context of the principle of legal equality, proportionality means that the benefit that the society gains from the different attitude towards comparable situations must be greater that the loss incurred by persons who enjoy a less favourable situation of the two.

To evaluate whether the legal norm, adopted by the legislator, complies with the proportionality principle one has to ascertain:

first of all, whether the means, used by the legislator are suitable for achieving the legitimate objective;

second, whether such an activity is required, i.e., if it is not possible to attain the objective by other means, which would less limit the rights and legal interests of an individual;

third, whether the activity of the legislator is proportionate or adequate, i.e., if the benefit, obtained by the society, is greater than the loss incurred to the rights and lawful interests of an individual.

If, after evaluating the legal norm, it is acknowledged that it does not comply with even one of the above criteria, then it shall be considered as not being in conformity with the principle of proportionality and illegitimate (*see: Judgment of March 19, 2002 by the Constitutional Court in the case No. 2001-12-01, Para 3.1 of the Concluding Part*).

12. As it has already been indicated, in the Criminal Procedure Law establishes the terms, within which pre-trial procedure shall be terminated or all procedural coercive methods and restriction of rights in relation to property shall be cancelled. No pre-trial investigation terms have been indicated in the Criminal Procedure Code.

In order to ensure transition from the old regulation to the new one, as well as to establish the order, according to which the terms of pre-trial procedure shall be calculated also in those cases that have been initiated before October 1, 2005 and wherein pre-trial investigation has not yet been terminated, the task and the right of the legislator was to establish the way, according to which the terms of pre-trial procedure

established in Article 389 of the CPL shall be applied to the criminal cases initiated before the abovementioned date. The Legislator fulfilled this task by passing the Contested Norm, from which it follows that pre-trial procedure shall be regarded as a continuation of pre-trial investigation and its terms shall be calculated from October 1, 2007 for the persons who have been conferred the rights to defence in accordance with the norms of the Criminal Procedure Code. Consequently, the terms of pre-trial procedure established in Article 389 of the CPL were applied to persons who have been conferred the rights to defence before October 1, 2005.

By means of the Contested Norm, the legislator has established such order for calculation of the terms of pre-trial procedure, which is not only explicit and unambiguous, but also practically realizable.

Consequently, the Contested Norm is appropriate for reaching the legitimate objective.

13. When assessing whether the action of the legislator when passing the Contested Norm was indispensable, it is necessary to find out whether the legislator could reach the objective of the Contested Norm by other means that would be more lenient in relation to the rights and lawful interests of an individual.

The legislator, by means of the new regulation, had to explicitly establish, from which moment the term of pre-trial procedure shall be calculated in criminal cases that have been initiated before October 1, 2005 and pre-trial investigation in which has not been terminated till the abovementioned date. Since Item 1 of the first part of Article 389 of the CPL provides that the maximum term of pre-trial procedure is only six months, it was reasonable that the legislator has chosen October 1, 2005 as the point of reference, but not an earlier date. The task of the legislator was not to establish an earlier date as the beginning of the term of pre-trial investigation by assigning a retrospective effect to the norms of the Criminal Procedure Law. Retrospective effect of legal norms is known in material criminal law. As it is indicated in the second part of Section 5 of the Criminal Law, a law which recognises an offence as not punishable, reduces the sentence or otherwise is beneficial to a person, as long as it is not provided otherwise by the applicable law, has retrospective effect. However the norms of criminal procedure law are not characterized by a retrospective effect. The

new regulation of the criminal procedure applies also to already initiated criminal procedures, and not only to the order of criminal procedure but also to legal status of persons involved in the procedure and the coercive methods applied to these persons (*see: Goßner-Meyer L. Strafprozessordnung. 48. Aufl. München: Verlag C.H.Beck, 2005, S. 51*). It is indicated in Article 4 of the CPL, which is included in Chapter I of the Law, "Basic Provisions of Criminal Procedure", that the order of criminal procedure shall be determined by that norm of criminal procedure law that is effective at the moment of carrying out the activities of procedure. Consequently, all procedural activities from October 1, 2005 had to be carried out in accordance with the norms of criminal procedure law effective at that time.

The Constitutional Court holds that the Contested Norm in relation to the rights of a person and his or her legal interests is lenient, because it applies the term of pre-trial procedure to the persons, in criminal cases of whom no maximum terms of pre-trial investigation have been provided at all in the previous legal regulation. Neither the Applicant, nor the institutions who have submitted their opinions in the case under review have mentioned other possible legal solutions that would be more lenient in relation to a person, if compared with the Contested Norm. The legislator could possibly provide also for another regulation for calculation of the terms of pre-trial procedure in criminal cases that have been initiated before October 1, 2005. However, any other legal regulation would also provide for a different attitude towards the groups of persons compared in the case under review, and there is no reason to assume that it would be more lenient in relation to an individual.

The Constitutional Court recognizes that the Contested Norm was necessary in order to establish an explicit and unambiguous terms of pre-trial procedure for those persons who have been conferred the rights to defence before October 1, 2005.

Consequently, the action of the legislator was necessary in order to reach the legitimate objective of the Contested Norm.

14. The opinion expressed by the Saeima that even if the Contested Norm would not exist, developers of the procedure would automatically apply the terms of pre-trial procedure established in the Criminal Procedure Law to non-terminated criminal cases and would start calculating the term from the date of coming into force

of the Law. Such attitude would be justified by the principle included in Article 4 of the CPL, according to which the order of criminal procedure shall be terminated by legal norms effective at the moment of carrying out the activities of procedure.

However, the legislator had to adopt the Contested Norm in order to ensure legal security, which is one of the essential principles of a law-governed State. By including the Contested Norm in the Transitional Provisions of the Criminal Procedure Law, the legislator, first of all, established that pre-trial procedure may be considered as a continuation of pre-trial investigation provided for in the Criminal Procedure Law. Second, by means of the Contested Norm, the legislator provided that the terms of pre-trial procedure regulated in the Criminal Procedure Law shall also be applied to those persons, criminal cases against which have been initiated before October 1, 2005. Legal security that is achieved by means of the Contested Norm, serves not only in the interests of the society, but also that of the persons involved in criminal procedure, including that of the Applicant.

It is necessary to take into consideration the there is one more group of persons, except for the groups of persons examined in the case under review, namely, persons who have been conferred the rights to defence in accordance with the norms of the Criminal Procedure Code and pre-trial investigation in criminal cases of whom was already terminated before coming into force of the Criminal Procedure Law. This group of persons was not at all provided with the term, within which pre-trial investigation shall be terminated or all security measures or restriction of the rights in relation to property shall be cancelled. The new legal regulation, namely, the Contested Norm in conjunction with Article 389 of the CPL considerably ameliorated the legal status of the Applicant, if compared to the status of persons of this third group.

Consequently, the Contested Norm ensures proportionality between the rights of an individual and the interests of the society and it complies with the first sentence of Article 91 of the Satversme.

Substantial Part

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

holds:

Para 3 of the Transitional Provisions of the Criminal Procedure Law comply with Article 91 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding Judge G. Kūtris