THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, May 9, 2008

in case No. 2007-24-01

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

having regard to the constitutional claim of Boriss Klopcovs,

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 22, 2008 in the Court Session examined the case in written proceedings

"On Compliance of the Second Sentence of the Second Part of Section 50 of the Latvian Penalty Execution Code with Article 92 of the Satversme (Constitution) of the Republic of Latvia."

The Constitutional Court has established:

1. The Latvian Penalty Execution Code (hereinafter – the Code) was adopted on December 23, 1970 with the title "Latvian SSR Corrective Labour Code" and become effective on April 1, 1971. On August 29, 1991 the Resolution by the Supreme

Council “On Approximation of the Latvian SSR Legislative Acts within the Territory of Latvia” was adopted and came into force. It provided that the Latvian SSR Corrective Labour Code shall be regarded as the Latvian Corrective Labour Code until elaboration of a new code. On December 30, 1994, the “Amendments to the Latvian Corrective Labour Code” was adopted, whereby the title of the Code was declared in the present wording.

Section 50 of the Code regulates the rights of persons sentenced to imprisonment to submit proposals, applications and claims to State authorities, public organization and officials, as well as provides for the order of submitting thereof. The second sentence of the second part of Section 50 of the Code provides: “The correspondence of the convicts with the UNO institutions, the Saeima Human Rights and Public Affairs Committee, the Ombudsman Bureau, the prosecutor’s office, the court, as well as the correspondence of a convicted foreign citizen with the diplomatic or consular representation of his or her state, which is authorised to represent his or her interests, shall be paid from the funds of institution of deprivation of liberty”.

2. The applicant Boriss Klopcovs (hereinafter – the Applicant) asks to assess compliance of the second sentence of the second part of Section 50 of the Code (hereinafter – the Contested Provision) with Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant indicates that the Contested Provision provides to pay for the correspondence of prisoners only with the institutions listed in the Provision form the funds of the institution of deprivation of liberty. However, the convicted person may also have a necessity for a correspondence with other institutions, for instance, the Ministry of Justice, the Latvian Prison Administration, the Legal Assistance Administration. Since the Administrative Procedure Law requires observe the order of prior out-of-court examination of a case, then the convicted person must submit a submission regarding the disputing of an administrative act or factual action (hereinafter – Submission) so that he or she could submit a claim to the administrative court. In order to justify this, the Applicant also refers to the decision of September 7, 2007 by the Administrative Regional Court in the case No. A42514807, which provides that, according to the viewpoint of the Administrative Regional Court, what

has been indicated by the applicant, i.e. that he has no rights to contest factual activity of the defendant in a superior institution because of the lack of money, shall not acquit the applicant form observation of the order of out-of-court examination of the case provided by law. The Applicant indicates that he has several times asked the prison administration to forward the Submission using the funds of the institution of deprivation of liberty; however the prison administration has refused doing it based on the Contested Provision. It is testified by the letters of the head person of the Jelgava prison and the Central Prison attached to the constitutional claim. Consequently, the convicted person who has no resources to pay for correspondence is denied the possibility to address the administrative court. Taking into account the aforesaid, the Applicant holds that the Contested Provision does not comply with the first sentence of Article 92 of the Satversme.

The Applicant also indicates that the Contested Provision neither provides for the possibility to pay for the correspondence of aconvict with the Legal Assistance Administration form the funds of the institution of deprivation of liberty. Consequently, a convicted person who has no resources for paying for postage is denied the rights to receive the state-guaranteed legal assistance. The Applicant holds that due to this reason the Contested Provision does not comply with the fourth sentence of Article 92 of the Satversme.

3. The institution that passed the contested act – the Saeima – holds that the constitutional claim is ungrounded and the Contested Provision complies with the Satversme.

None of the norms of the Satversme requires paying for correspondence of a convict with all State of municipal institutions from the State budget disregarding the content of the correspondence. Consequently, the Contested Provision does not restrict the rights of a convict to address State or municipal institutions, but it rather provides for additional guarantees. The objective of such normative regulation is to provide a convict with the possibility to be in free of charge correspondence with institutions and persons that can ensure protection of their rights mainly in relation with their custody, namely, to ensure that a convict, without any financial obstacles, could complaint

about activities of the representatives of prison administration, conditions of detention, violations of human rights, etc.

The right to a fair court does not require that the State would absolve a convicted person from all costs. On contrary – a person must perform such payments as State fee and other fees, it must take into consideration travel expenses or postage, as well as remuneration for his or her representative. Moreover, reasonable costs prevent persons from aimless litigation by thus ensuring the rights of other persons and the interests of legal procedure. Consequently, the Saeima holds that the Contested Provision does not restrict the rights guaranteed in Article 92 of the Satversme.

Moreover, the Saeima indicates that in the case of the Applicant violation of the basic rights has been caused in the result of false interpretation and application of legal norms. According to Section 77 of the Administrative Procedure Law, the Applicant had to submit the Submission to the Jelgava Prison. However, the Jelgava Prison had to forward the Submission to the head person of the Latvian Prison Administration. Consequently, disputing against factual actions could not cause even minimum expenses for the Applicant. Therefore, in this case, violation of the basic rights of the Applicant could not be caused due to the Contested Provision. Taking into consideration the aforesaid, the Saeima holds that it is necessary to assess whether it is useful to continue proceedings in the case under review. If the Constitutional Court considers it useful to continue proceedings in the case under review, then the Saeima asks to recognize the Contested Provision as compliant with Article 92 of the Satversme.

4. The Ministry of Justice holds that the Contested Provision complies with Article 92 of the Satversme and does not restrict the rights guaranteed for a person.

The rights of each person to address State and municipal institutions according to the order established by Law are strengthened in Article 104 of the Satversme. These rights are regulated in more details in several laws, including the Law on Application and the Code. However, the fourth part of Section 9 of the Postal Law provides that postage shall be paid by the sender when passing a consignment to the post office. Section 11 of the Postal Law provides for the list of consignments and persons who are acquitted from paying postage. Convicted persons and imprisoned

persons are not included in the list of these persons. Similarly, neither low-income persons, nor unemployed or persons who live in different State institutions of social care are acquitted from paying postage.

By means of the Contested Norm, a convict are conferred special rights, because the penalty of deprivation of liberty is a criminal penalty that restricts human rights at the greatest extent and this regulation is adopted in order to ensure the basic rights and freedoms of the convicts. The objective of the Contested Provision is to provide convicts with the possibility to contact organizations and institutions that ensure and monitor observation of human rights, as well as with diplomatic and consular representation. The essence of the Provision is to ensure convicts with the possibility to defend themselves from eventual legal violations that can be caused due to the particular status of a convict.

The Ministry of Justice also indicates: if it was considered that the convicts must be ensured with the possibility to be in correspondence with any State or municipal institution, persons who also have low income but who have not committed a crime and are not placed in custody would find themselves in unequal situations, since these persons must pay for postal correspondence with State or municipal institutions themselves. Moreover, Section 48 of the Code provides for the rights of the convicts to receive cash transfers, but Section 51 – to earn money themselves in order to pay for postage. The European Prison Rules and the European Convention for Protection of Human Rights and Fundamental Freedoms neither require that correspondence of convicts with State institutions should be paid from the State budget.

Taking into account the aforesaid, the Ministry of Justice holds that the Contested Provision is not in conflict with Article 92 of the Satversme.

The Ministry of Justice informs that, until now, it has not considered other models of financing regarding personal correspondence of convicted persons with State institutions, because the necessity to pay for postage has not serves as an obstacle for convicts to exercise their rights to be in correspondence also with the institutions that are not mentioned in the contested provisions.

The Ministry of Justice also indicates that according to the information at its disposition Section 28 of the Estonian Custody Law provides that expenses related to

correspondence and use of a telephone and other means of public communication shall be paid by the prisoner. Item 47 of the Regulations of Prisons of Estonia provides that the letters addressed to a legal chancellor, the Ministry of Justice, places of custody, the Secretariat of the President of the State, a public prosecutor, an inspector or a court shall be paid by the prison. Also, according to Section 99 and 100 of the Lithuanian Penalty Execution Code, the convicts shall pay postage for posting proposals, applications and claims. At the same time, the Ministry of Justice informs that a convict in Lithuania is entitled to receive a payment at the amount of 0.3 part of the living wage. Moreover, the head of the correctional facility may allocate a benefit at the amount of 52 lits to a convicts who has no money is his or her own account, and the money is paid form the social assistance fund for convicts. The Ministry of Justice also indicates that Para 284 of the Internal Rules of Order of Prisons confirmed by the Order No. 178 of September 7, 2001 by the Ministry of Justice of the Republic of Lithuania provides for ensuring prisoners with envelopes, postage stamp and writing tools and paper for writing proposals, applications and claims in case if there are no such tools at the disposition of convicts or they demand these tools. This paragraph provides that postage shall be paid from the budget of the investigation detention institution.

5. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that Article 92 of the Satversme includes a requirement that the State shall ensure a persons with effective rights to address court, including the rights to an available and high-quality legal assistance. Availability of administrative courts are partially ensured by the regulation included in Section 77 of the Administrative Procedure Law, which provides that a submission regarding the disputing of an administrative act shall be submitted to the institution, the administrative acts issued by which has been contested, and this institutions is responsible for forwarding this submission regarding the disputing of an administrative act to a higher institution. However, the Ombudsman draws attention also to the fact that not always a prisoner contests any administrative act issued by or factual activities of the place of custody where he or she is placed. A prisoner, when submitting a submission regarding the disputing of an administrative act, may be transferred to another place of custody.

Likewise, a prisoner may need to address other institutions, like the Health Inspectorate. However, neither the Latvian Prison Administration, nor the Health Inspectorate ism mentioned in the Contested Provision.

It follows from the first and the fourth sentence of Article 92 of the Satversme that a person, with the view to protect his or her rights and legal interests in a fair court, is entitled to receive the necessary legal assistance form the persons who have acquired respective knowledge and skills. Article 92 of the Satversme obligates the State such assistance for the persons who can not afford it. The criteria and order of receiving a State ensured legal assistance in Latvia is regulated by the State-Ensured Legal Assistance Law. However, at resent persons themselves must cover the expenses for submitting a request for State-ensured legal assistance and any further correspondence with the Legal Assistance Administration. This causes problems for prisoners. The Constitutional Court has recognized in its judgment of June 12, 2002 No. 2001-15-03 that prisoners are fully maintained by the State. Moreover, by referring to the 2006 public report of the Latvian Prison Administration, the Ombudsman also indicates that in 2006, only 30 percent of the entire total of able-bodied prisoners was employed in places of custody. The Ombudsman informs that there are situations when prisoners have no resources at their disposition, as well as they have no relatives who would be able to provide them material support. Consequently, such prisoners are denied to rights to state-ensured legal assistance.

The Ombudsman indicates: the fact that the Contested Provision does not enumerate all institutions that prisoners would find it useful to address does not *per se* contradict Article 92 of the Satversme. However, at present there exist no norms that would provide a prisoner the possibility to address court also in the case if he or she has no income, and consequently the rights of a person to address court are being restricted.

The Ombudsman informs that it has already received complaints regarding the problem discussed in the constitutional claim.

6. The Latvian Prison Administration informs that, on January 1, 2007, 25.50 percent form the entire total of prisoners have been employed, but, on January 1, 2008, - 27.80 percent of prisoners. Likewise, the Latvian Prison Administration indicates that

LVL 4288 have been spent on implementation of the Contested Provision in 2006, i.e. LVL 0.87 per each prisoner, but in 2007 – LVL 5047 were spend, i.e. LVL 1.04 per each prisoner.

The Constitutional Court has concluded:

7. Article 92 of the Satversme provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of counsel."

It follows from the constitutional claim that compliance of the Contested Provision with the first and the fourth sentence of Article 92 of the Satversme is contested.

8. When analyzing the first sentence of Section 92 of the Satversme, the Constitutional Court has acknowledged that the concept "fair trial" included therein provides for two aspects, namely, "fair trial" as an independent judiciary institution, which examines the case, and "fair trial" as a proper process relevant for a judicial country, wherein this case is examined. Section 92 of the Satversme provides for both - the responsibility to create a relevant judicial institution system and the responsibility to adopt relevant procedural norms (*see: Para 2 of the Concluding Part of the Judgment of the Constitutional Court of March 5, 2002 in case No. 2001-10-01 and Judgment of the Constitutional Court of April 11, 2007 in the case No. 2006-28-01, Para 9*).

It means that everyone has the right not only to a fair court procedure but also to access to court. If the State is obligated to form independent and objective courts and to ensure a range of procedural guarantees, then it is logic to demand that the persons were ensured with an access to court and they could take advantage of these guarantees. As the Constitutional Court has already indicated, fairness of the court would be of no importance, if access to court were not ensured (*see, e.g.: Judgment of the Constitutional Court of June 27, 2003 in the case No. 2003-04-01, Para 1.1 of the*

Concluding Part, Judgment of the Constitutional Court of October 17, 2005 in the case No. 2005-07-01, Para 6 and Judgment of the Constitutional Court of March 14, 2006 in the case No. 2005-18-01, Para 8).

9. The Applicant indicates that no rights to access to court have been ensured, since the Contested Provision does not provide to pay for submission of applications and requests for legal assistance from the State budget. However, the Saeima indicates that Article 92 of the Satversme does not require that the State would free a person form all expenses of legal proceedings. A person must make such payments as State tax and other taxes, he or she must take into consideration travel expenses or postage, as well as expenses for employing a representative. It neither follows from the Satversme that it is necessary to pay for correspondence with all State and municipal institutions disregarding the content of the correspondence from the State budget.

Consequently, it is possible to establish that in this case the dispute is about that the State is not only obligated to refrain from actions that would restrict the rights of a person to a fair court, but it is also obligated to carry out activities for ensuring these rights.

10. The Constitutional court has established in several judgment sthat the State is obligated to refrain from actions that restricts the rights of a person to a fair court (*see: Judgment of the Constitutional Court of June 27, 2003 in the case No. 2003-04-01, Judgment of the Constitutional Court of November 6, 2003 in the case No. 2003-10-01, Judgment of the Constitutional Court of December 6, 2004 in the case No. 2004-14-01, Judgment of the Constitutional Court of January 4, 2005 in the case No. 2004-16-01, Judgment of the Constitutional Court of March 14, 2006 in the case No. 2005-18-01*). However, the Constitutional Court has also concluded that from the rights to a fair court follows a positive duty of the State to carry out measures for ensuring these rights. The constitutional Court has also indicated that Article 92 of the Satversme includes the duty of the State to ensure, in certain cases, a high-qualified legal assistance for persons who can not afford it themselves (*see: judgment of the Constitutional Court of June 27, 2003 in the case No. 2003-04-01, Para 5 of the Concluding Part*). Consequently, the Constitutional Court has concluded that the State

can establish the duty to pay the State tax or a security deposit for submitting an application or a claim to a court. However, Article 92 of the Satversme requires the legislator to ensure the most lenient possible application of this restriction. In a democratic law-based state it is inadmissible to make appealing a court judgment dependable only on the financial possibilities of a person (*see: Judgment of the Constitutional Court of January 4, 2005 in the case No. 2004-16-01, Para 8 and Judgment of the Constitutional Court of March 14, 2006 in the case No. 2005-18-01, Para 17*). Taking into account the aforesaid, it is possible to conclude that from the rights to a fair court follows the duty of the State to carry out measures for reducing expenses of persons related with legal proceedings or even in certain cases to free persons from these expenses.

11. When establishing the content of the basic rights provided for in the Satversme, it is necessary to take into account the international liabilities of Latvia in the field of human rights. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme (*see: Judgment of the Constitutional Court of May 13, 2005 in the case No. 2004-18-0106, Para 5 of the Concluding Part and Judgment of the Constitutional Court of October 18, 2007 in the case No. 2007-03-01, Para 11*). The duty of the State is to take into consideration the international liabilities in the field of human rights that follow from Article 89 of the Satversme, which provides that the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international ones (*see: Judgment of the Constitutional Court of August 30, 2000 in the case No. 2000-03-01, Para 5 of the Concluding Part, Judgment of the Constitutional Court of January 17, 2002 in the case No. 2001-08-01, Para 3 of the Concluding Part and Judgment of the Constitutional Court of October 18., 2007 in the case No. 2007-03-01, Para 11*).

11.1. The rights to a fair court are guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter – the Convention). The European Court of Human Rights has recognized that not only a negative, but also a positive duty follows from this article. The European Court of Human Rights has indicated in several cases that a State is obligated to ensure legal assistance also in civil cases (*see, e.g.: Judgments of the European Court of Human Rights in the cases: Airey v. Ireland, judgment of 9 October 1979, Series A no. 32, para. 26; Steel and Morris v. the United Kingdom, judgment of 15 February 2005, para. 60; Laskowska v. Poland, judgment of 13 March 2007, para. 51)* or it is obligated to ensure execution of judgments of a court (*see, e.g.: Judgments of the European Court of Human Rights in the cases: Hornsby v. Greece, judgment of 19 March 1997, para. 40; Prodan v. Moldova, judgment of 18 May 2004, para. 52).* However, when explaining the rights to inviolability of correspondence included in Article 8 of the Convention, the European Court of Human Rights and the European Commission of Human Rights has indicated that a State may be obligated to ensure availability of paper, envelopes and postage stamps for a person to be able to exercise the rights established in Article 8 of the Convention. Though, this does not mean that a State is obligated to ensure that all mailings of prisoners were sent for free. However, a State is delegated this responsibility if exercising of the rights of prisoners to correspondence is considerably hampered due to the lack of resources (*see, e.g.: Judgments of the European Court of Human Rights in the cases: Cotleţ c. Roumanie, arrźt du 03 juin 2003, para. 59; A.B. v. the Netherlands, judgment of 29 January 2002, paras. 90-9 and judgment of the European Court of Human Rights in the case: Boyle v. the United Kingdom, decision of 6 March 1985 on the admissibility of the application, para. 5).*

11.2. It is also indicated in the Commentary to the Recommendation of the Committee of Ministers of the Council of Europe Rec (2006) 2 that a State may be delegated the responsibility to pay for the correspondence of prisoners with a lawyer if they can not afford paying for it themselves. It is also explained in this Commentary that prisoners, in the case of need, must be provided with postage stamps so that they could effectively exercise their rights to appeal *[Commentary to Recommendation REC (2006) 2 of the Committee of Ministers to Member States on the European Prison*

Rules, p.9 and p.31. http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/legal_instruments/E%20commentary%20to%20the%20EPR.pdf].

11.3. The Council of Europe Anti-Torture Committee, which supervises the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment binding to Latvia, has appealed the Member states to provide the prisoners who have no means with paper, writing tools, envelopes and postage stamps *[Report to the authorities of the Kingdom of the Netherlands on the visit to Aruba carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 2 July 1994, para. 259. http://www.cpt.coe.int/documents/nld/1996-27-inf-eng-1.htm; Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 23 July 1997, para. 86. http://www.cpt.coe.int/documents/est/2002-26-inf-eng.htm].*

Consequently, the State also has positive duties in relation with the rights to access to court, including the duty to cover expenses for correspondence of prisoners with a lawyer or for posting complaints.

12. Moreover, the basic rights established in the Satversme may not be of a declarative nature. It is also necessary to ensure their implementation in practice (*see: Judgment of the Constitutional Court of June 27, 2003 in the case No. 2003-04-01, Para 6 of the Concluding Part and Judgment of the Constitutional Court of October 6, 2003 in the case No. 2003-08-01, Para 5 of the Concluding Part*). It also concerns the rights to access to court. If a person has been by law guaranteed the possibility to address a court but in fact it is not possible to implement the pre-conditions for submission of an application, then it can not be considered that the State has ensured practical implementation of the rights to access to court. It is also necessary to take into consideration that the Constitutional Court has already recognized that the rights to a fair court are restricted by the fact that a person can not post a proposition, application or claim (*see: Judgment of the Constitutional Court of February 6, 2006 in the case No. 2005-17-01*).

Consequently, it is possible to conclude that the State is obligated to pay for the correspondence of prisoners related with the access to court in the case if there are no means at the disposition of the person for covering correspondence expenses.

13. Taking into account the aforesaid, it is necessary to investigate whether the State has fulfilled this duty. The Contested Provision establishes that the State shall pay for the correspondence of prisoners only with UNO institutions, the Saeima Human Rights and Public Affairs Committee, the Ombudsman Bureau, the prosecutor's office, a court, as well as for the correspondence of a convicted foreign citizen with the diplomatic or consular representation of his or her state, which is authorised to represent his or her interests. However, in order to address an administrative court, a person must first of all use preliminary extra-judicial examination procedures of a case. Item 5 of the first part of Section 191 of the Administrative Procedure Law provides that a judge shall refuse to accept an application if the applicant has not complied with preliminary extrajudicial examination procedures prescribed by law for such category of matter, namely, he or she has not contested an administrative act or factual activity. The fact that observation of preliminary extrajudicial examination procedures are mandatory is also confirmed by the practice of administrative courts (*see, e.g.: Decision of the Senate Administrative Case Department of the Supreme Court of the Republic of Latvia of December 3, 2007 in the case SKA-539/2007, Para 10. http://www.at.gov.lv/ files/ archive/ department3/ 2007/ ska-0539-07_arpusties_ izskatisana.doc).* Consequently, if a person can not submit a submission regarding the disputing of an administrative act, then he or she is prohibited to access to an administrative court. Taking into consideration the aforesaid, it is necessary, in order to establish whether the rights of prisoners to access to court are being restricted, to assess whether prisoners are provided with a possibility to submit a submission regarding the disputing of an administrative act.

13.1. The order of submission of a submission regarding the disputing of an administrative act is established Section of the Administrative Procedure Law: "A submission regarding the disputing of an administrative act shall be submitted in

writing or orally to the institution that has issued the administrative act. If a submission is submitted orally, the institution shall immediately draw it up in writing and the submitter shall sign it. Such submission shall be forwarded for examination to a higher institution within a period of seven days."

13.2. It is possible to agree with the Saeima that a prisoner does not need to use postal service for sending submissions regarding the disputing of an administrative act if the prisoners contests an administrative act issued by or factual activities of the place of custody where he or she is placed. If a prisoner wants to dispute an administrative act issued by or factual activities of this place of custody, then according to Section 77 of the Administrative Procedure Law, the submission shall be submitted to the administration of this institution, but the duty of the administration is to forward it to a higher institution.

The Applicant has attached to the constitutional claim the letters of the Jelgava Prison and the Central Prison that show that the administration of the places of custody, by referring to the Contested Provision, has not forwarded the submission regarding the disputing of an administrative act to the Latvian Prison Administration. The Constitutional Court asks the places of custody to pay attention to the fact that their functioning is regulated not only by the Code, but also by the Administrative Procedure Law. Consequently, the places of custody are obligated to forward a submission regarding the disputing of an administrative act to a higher institution at their own expense. Otherwise, Section 77 of the Administrative Procedure Law is violated.

Consequently, it is possible to conclude that the regulation established in the normative acts ensures the rights of prisoners to access to an administrative court in the cases when a prisoner appeals against an administrative act issued by or factual activities of the place of custody where he or she is placed.

13.3. However, the Applicant and the Ombudsman justly indicate that a prisoner may need to appeal against not only an administrative act issued by or factual activities of the place of custody where he or she is placed, but also against administrative acts issued by or factual activities of other institutions. For instance, a prisoner may need to contest and then appeal against an administrative act issued by or factual activities of the Latvian Prison Administration, a local government, State

Social Insurance Agency of that of the place of custody where he or she had been placed. In such cases, a prisoner has no possibility to hand in a submission regarding the disputing of an administrative act personally, and it must be posted. The Contested Provision does not provide for a possibility to pay for postage of such submission from the State budget even if the prisoner has no money at his or her disposition.

14. Similarly, a prisoner may also need legal assistance in order to exercise his or her rights to a fair court, for instance, in civil cases. The duty of the State to ensure a free communication with a lawyer, as well as the duty to ensure, in certain cases, legal assistance for persons who can not pay for it themselves follows from the rights to access to court, as well as from the fourth sentence of Section 92 of the Satversme (*see: Judgment of the Constitutional Court of June 27, 2003 in the case No. 2003-04-01, Para 5 of the Concluding Part*). According to Section 22 of the State-Ensured Legal Assistance Law, a person who wants to receive the State-ensured legal assistance must submit a request for legal assistance to the Legal Assistance Administration. A convict has the possibility to submit this request by post only. The Contested Provision does not provide for the duty of the State to pay for posting the request for legal assistance.

15. Consequently, the rights of convicts to access to court and the rights to a lawyer depend on the fact whether they can pay for posting a submission regarding the disputing of an administrative act and a request for legal assistance. The Applicant indicates that he has no resources at the disposition to pay for the postage. The note issued by the Jelgava Prison confirms that the Applicant has no financial resources at his disposition (*see: Case materials, pp. 9*). The Latvian Prison Administration and the Ombudsman also indicate that the State can employ only a small part of prisoners – less than one third of them (*see: Case Materials, pp. 129 and 132*). Consequently, it can happen that a prisoner has no means at the disposition because he or she is not employed, does not receive a pension or money from his or her relatives.

It is possible to conclude that in Latvia there exist prisoners, including the Applicant, who can not post a submission regarding the disputing of an administrative

act or a request to the Legal Assistance Administration due to lack of financial resources.

16. The Ministry of Justice indicates that other low-income persons have the same situation. The Constitutional Court can not fully agree with this statement of the Ministry. First of all, persons who are not deprived of liberty can personally take the submission to the corresponding institution. Also persons who have financial difficulties due to objective reasons may usually receive social assistance. Moreover, the fact that there exist a group of persons without financial resources in the state does not *per se* serve as justification for denying the rights to access to court for other persons. The Constitutional Court has already indicated that in a democratic law-based State it is inadmissible to make appealing a court judgment dependable only on the financial possibilities of a person (*see: Judgment of the Constitutional Court of March 14, 2006 in the case No. 2005-18-01, Para 17*). The State has the duty to look for more lenient solutions to cover the expenses of legal proceedings.

17. The Saeima emphasizes that the present order is justified, since reasonable tasks of legal proceedings prevent persons from ungrounded litigation by thus ensuring the rights of other persons and the interests of legal proceedings.

17.1. It is possible to agree with the Saeima that the duty of a person to cover costs and expenses of proceedings may reduce the number of ungrounded applications. Thus the work load of courts is reduced and the rights of other persons to a fair court, namely, the rights to examination of a case within reasonable term, are ensured. Moreover, posting of a submission regarding the disputing of an administrative act or that of a request for legal assistance costs less than LVL 1. These expenses can not be regarded as considerable expenses. However, even small expenses may serve as the reason for a person to evaluate the necessity to post a submission to a court. Consequently, by providing that a person himself or herself shall cover pay for the postage of a submission regarding the disputing of an administrative act or a request for legal assistance the State can reduce the number of ungrounded applications to the court by thus protecting the rights of other persons to a fair court.

17.2. Although expenses for posting a submission are not heavy, the tool selected by the legislator considerably restriction the rights of a person. If a prisoner has no resources at his or her disposition, then it has no possibility to receive state-ensured legal assistance. Consequently, such persons can not effectively exercise their rights to access to court. However, if a prisoner has no money for posting a submission for the disputing of an administrative act, he is fully denied the rights to access an administrative court.

17.3. The necessity to prevent persons from ungrounded litigation may not serve as the reason for restricting substantially the access to court. Especially if the experience of other states and practice of international human rights institutions shows that it is possible to apply more lenient means. For instance, in Lithuania, a convict who has no money at his or her disposition may receive a small benefit (*see: Case materials, pp. 139*). Likewise, in Lithuania, the Netherlands and other States, postage of certain number of letters per month or week are paid for a prisoner of he or she has financial problems (*see, e.g.: Judgment of the European Court of Human Rights in the case: A.B. v. the Netherlands, judgment of 29 January 2002, para. 91; Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 12 July 1996, para. 153. http://www.cpt.coe.int/documents/pol/1998-13-inf-eng.htm]*. Thus, first of all, the group of persons, for whom allowances are granted, is limited to those persons who do have financial difficulties. Second, taking into consideration the limited possibilities for providing assistance, the receivers of the assistance would consider the way of using it. Thus these means can reduce the number of ungrounded applications by simultaneously allowing persons to practically exercise the rights to access to court, as established in normative acts. Consequently, it is possible to conclude that the Contested Provision non-proportionally restricts the rights of a person to access to court.

18. Consequently, it is possible to conclude that the Contested Provision does not ensure the rights to access to court for those persons who have no financial resources at their disposition and who need to post a submission regarding the

disputing of an administrative act or a request for legal assistance. Consequently, the State has not fulfilled its positive duty, which follows from the rights to a fair court.

Consequently, the Contested Provision does not comply with Article 92 of the Satversme insofar as it does not provide to pay for posting submissions regarding the disputing of an administrative act or requests for legal assistance for those prisoners who have no financial resources at their disposition.

19. When establishing the date, from which the Contested Provision would become invalid, the Court has taken into consideration the fact that the legislator, in order to prevent the violation of the rights to a fair court, must examine several possible solutions and establish, which of them would be the most appropriate for the situation of Latvia. Consequently, the legislator needs time to improve the normative regulation.

Substantive Part

The Constitutional Court, based on Article 30 – 32 of the Constitutional Court Law

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the second sentence of the second part of Section 50 of the Latvian Penalty Execution Code, insofar as it does not provide to pay from the State budget for posting of submissions regarding the disputing of an administrative act or factual activities and requests for legal assistance for those prisoners who have no financial resources, does not comply with Article 92 of the Satversme of the Republic of Latvia and is invalid as from November 1, 2008.

The Judgment is final and not subject to appeal.

The Judgment comes into force on the day of publishing it.

The Presiding Judge G. Kūtris