



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, February 6, 2006

JUDGMENT in the name of the Republic of Latvia

in case No. 2005-17-01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Juris Jelāgins, Romāns Apsītis, Aija Branta, Ilma Čepāne and Gunārs Kūtris

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (Item 8 of the first Part) and 281

on the basis of the claim by the State Human Rights Bureau

in written proceedings at January 10, 2006 Court session reviewed the matter

”On the Compliance of the Words ”to Mail Letters”, Included in Section 74 (the First Part) of the Latvian Penalty Execution Code with Articles 89, 92 and 104 of the Satversme””.

The establishing part

1. In accordance with Section 70 of the Latvian Penalty Execution Code (henceforth – the Code) a person deprived of personal liberty (henceforth – the convicted person) for gross or systematic offences of the requirements of regime of serving one’s sentence, inter alia may be inflicted such punishment:
 - 1) the convicted person, who serves the sentence in a prison, may be placed in a solitary confinement cell for the period of time up to fifteen days and nights;

- 2) the convicted person, who serves the sentence in a penitentiary for minors, may be placed in a disciplinary confinement cell for the period of time up to ten days and nights.

Section 74 of the Code regulates the regime of the punishment and disciplinary solitary confinement (henceforth – solitary confinement). The first Part of the Section determines: "The convicted persons, placed in penalty or disciplinary solitary confinement cell do not experience the right of meeting, receiving parcels and printed matters, buying food-stuffs, mailing letters and using games; smoking is forbidden to them". The claim contests the words "mailing letters" of this norm (henceforth – the impugned norm).

The Code (then titled "The Penitentiary Code of the Latvian SSR) was adopted on December 23, 1970 and is in effect since April 1, 1971. On August 29, 1991 the Supreme Council decision "On Approximation of Latvian SSR Legislative Acts in Latvia" was adopted and simultaneously took effect. This decision determines that the Penitentiary Code of the Latvian SSR shall be regarded as the Latvian Penitentiary Code till a new code will be elaborated. On December 30, 1994 the Law "Amendments to the Latvian Penitentiary Code", passed on December 15, 1994, took effect. By it the title of the Code was expressed in the present wording. After August 29, 1991 no amendments to the impugned norm have been passed.

- 2. The submitter of the claim** – the State Human Rights Bureau – requests to declare the prohibition to mail letters, included in the first part of Section 74 of the Code as unconformable with Articles 89, 92 and 104 of the Republic of Latvia Satversme (henceforth – the Satversme).

The submitter of the claim points out that the fundamental right to a fair court, established in Article 92 of the Satversme includes also access to court, the right to appeal at the court, which means that the person experiences the right to review of the matter at a court to defend his/her rights and lawful interests. The convicted person, who may be both the claimant as well as the defendant in a civil case and the applicant or the third person in an administrative case, shall also experience the above right. The submitter of the claim holds that the impugned norm groundlessly forbids the convicted person, who is placed in a solitary confinement cell, to mail letters – also applications to the court, appellate or cassation claims. Thus – to the mind of the submitter – the right of the convicted person to address the court is restricted.

The submitter of the claim holds that the impugned norm does not comply with Article 104 of the Satversme either, as it envisages the right of the person to address submissions to State or local government institutions and to receive a materially responsive reply. Usually the

restriction to mail letters from the solitary confinement cell does not cause essential damage to the person. However, sometimes violation of the rights of person may occur, because – for him/her to obtain some rights or benefit - the documents to the State or local government have to be submitted within a certain period of time. For example, in accordance with Section 79 of the Administrative Procedure Law an administrative act may be disputed within a one-month period from the day it comes into effect.

In the same way it is stressed in the claim that the impugned norm is unconformable with Article 89 of the Satversme, in accordance with which the state shall protect the fundamental rights of a person in the most efficient way. The impugned norm denies the right of a person, who is placed in the solitary confinement cell, to contest the disciplinary penalty to higher authorities for review, as the convicted person is not allowed to mail letters. The right is envisaged in Section 71 (the fifth Part) of the Code. Efficient protection of the right may be ensured only if the person is able to dispute the inflicted disciplinary punishment even while being placed in the solitary confinement cell.

After getting acquainted with the materials in the matter, the submitter of the claim points out that the Bureau does not agree with the viewpoint, expressed in the Saeima written reply, that the problem is connected only with interpretation and application of the norms of law. The submitter of the claim holds: to recognize that restriction of a human rights norm is established by law, the norm, determining the restriction shall comply with certain requirements of quality; that is, it has to be clearly and precisely formulated. The impugned norm is not clear and precise enough; as is testified by the letter of the Department of Imprisonment Places and the information, furnished by the prisons, attached to the matter, because the above institutions are not of unanimous viewpoint about the contents of the impugned norm.

- 3. The Saeima** requests the Court to declare the claim as ungrounded, but the impugned norm – as conformable with Articles 89, 92 and 104 of the Satversme. The Saeima admits that by interpreting the impugned norm only with the grammatical method, one may come to an erroneous conclusion that restriction of fundamental rights, determined by the Satversme, is included in the norm. To establish the real sense of the impugned norm, it shall be analyzed as read together with other norms of the Code, taking into consideration the historically created structure and contents of the Code.

It is pointed out in the written reply that private correspondence of the convicted persons and their addresses with proposals, applications and claims to the State and local authority institutions as well as public

organizations are separated one from the other and these activities are regulated in separate Sections of the Code – in Section 49 "Correspondence, Telegrams and Telephone Calls of Persons Sentenced to Imprisonment" and in Section 50 "Proposals, Applications and Claims of Persons Sentenced to Imprisonment". Thus the impugned norm restricts only the rights, which are anticipated in Article 96 of the Satversme (the right to private life), but does not restrict the rights, determined in Articles 92 and 104 of the Satversme.

The Saeima expresses the viewpoint that in the matter there is no dispute on the issue whether the convicted person, who has been placed in a solitary confinement cell, experiences the right to address the court as well as State and local authority institutions. The problem is connected with interpretation and application of the norms of law, but not with conformity of the impugned norm with the norms of the Satversme.

It is pointed out in the written reply that the impugned norm does not forbid the convicted person, who has been placed in a solitary confinement cell, to contest the decision on infliction of the disciplinary punishment to higher authorities, that is, to the Chief of the Department of Imprisonment Places. As this decision shall be regarded as an administrative act, then - in accordance with Section 77 of the Administrative Procedure Law - a submission regarding the disputing of the infliction of the disciplinary punishment shall be submitted in writing or orally to the institution that has taken the decision (has issued the administrative act). Thus there is no necessity to mail a letter.

- 4. The Department of the Imprisonment Places**, when answering to the questions of the Constitutional Court, points out that it has not issued internal normative acts, which regulate correspondence of the convicted persons, who are detained in solitary confinement. General rights, established in Section 49 of the Code, are restricted if a person is detained in solitary confinement, however, the prohibition does not refer to the rights, determined in Section 50 of the Code. Correspondence of a convicted person, who is detained in solitary confinement, with UNO institutions, the Saeima Human Rights and Public Affairs Committee, the State Human Rights Bureau, Prosecutor's Office, courts, defense counsel, but for a convicted foreign state citizen – also with the Consular or Diplomatic Department of the respective state, which is authorized to represent his/her interests, is not limited. The convicted person is not prohibited to meet the representatives of the above institutions.

The Department of the Imprisonment Places points out that it has submitted to the Ministry of Justice a motion to amend the first Part of Section 74 of the Code, determining that correspondence shall be

permitted with the institutions, mentioned in Section 50 (the second Part) of the Code, and with close relatives.

Besides, in 2005 the Department of Imprisonment Places has not received any complaints of the convicted persons on restrictions to correspondence with courts and other State and local authority institutions during the period of being detained in solitary confinement.

5. When preparing the matter for review, the Constitutional Court requested information on the practice of application of the impugned norm from the places of deprivation of liberty.

All the places of deprivation of liberty have pointed out that observation of the right of contesting the decision on the infliction of disciplinary punishment is ensured for all the convicted persons, who are detained in solitary confinement.

The Ilūciems, the Jēkabpils, the Šķirotava and the Vecumnieki prisons inform that for the convicted persons, who are placed in solitary confinements, only the right to correspondence with private persons, established in Section 49 of the Code is restricted, but correspondence with the institutions and officials, mentioned in Section 50 of the Code is not limited.

The Brasa prison and the prison behind the Lielupe holds that the first Part of Section 74 of the Code denies for the person, who is detained in solitary confinement, the right of mailing letters. However, if the convicted person has to mail a letter to a State institution within a period of time determined by law and if non-observance of the term may create substantial harm, then the possibility to do it is ensured.

In the letter of **the Olaine prison** it is mentioned that the first part of Section 74 of the Code does not permit the convicted persons to mail letters from the solitary confinement cell, but they may address the warden of the prison with complaints and proposals. Mailing of letters takes place in accordance with the Department of Imprisonment Places April 12, 2005 Instruction No.46 "The Procedure of Registration of Submissions and Complaints by the Convicted Persons at the Places of Imprisonment".

The Daugavpils, Grīva, Jelgava and Valmiera prisons point out that in accordance with the first part of Section 74 of the Code the convicted persons, who are detained in solitary confinement cells, do not have the right to mail letters, and the procedure is observed.

Matīsa prison points out that in its practice there has been no case when the convicted person, while being detained in solitary confinement, would have wanted to mail a letter.

Cēsis Penitentiary Establishment for Minors mentions, that the employees of the establishment act in accordance with several documents of the Department of the Imprisonment Places and the Ministry of Justice.

The Central prison and the Liepāja prison, which are investigatory prisons, point out that they are guided by the Cabinet of Ministers April 29, 2003 Regulations No. 211 "Regulations on the Internal Procedure of the Investigatory Prisons".

The concluding part

6. Deprivation of liberty – forced keeping of a person in imprisonment – is a kind of punishment, which is connected with the restriction of the fundamental rights, mainly – the right to liberty. The convicted person is isolated from the habitual environment and mode of life. Restrictions, which are determined in accordance with execution of penalty of deprivation of liberty, create to the convicted person physical and psychological burden and difficulties (*sk.: Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski-praktiskais komentārs. 2. grāmata. Vispārīgā daļa 37.lpp.; see: Krastiņš U., Liholaja V., Niedre A. Scientific and Efficient Comment to Criminal Law. Vol.2. General part.- // Riga: AFS, 2003, p.37*).

Within the framework of the penalty execution regime, certain restrictions, which are envisaged in the Code and other normative acts, are established. These restrictions shall not be greater than it is necessary for the type of the inflicted penalty and the regime of the execution of it. In the Judgments of the Constitutional Court it has been stressed that measures, connected with the restriction of fundamental rights shall be permissible only to such an extent, which is necessary for reaching the legitimate aim (*sk., piemēram, Satversmes tiesas 2002. gada 22. oktobra sprieduma lietā No. 2002-04-03 secinājumu daļas 7. punktu; see, e.g., the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 7 of the concluding part*).

If during serving the sentence the convicted person violates the internal rules of the place of deprivation of liberty, he/she may be inflicted a disciplinary punishment (Sections 70-72 of the Code). The most severe of the punishments is placement of the convicted person in the solitary confinement cell. The restrictions of rights, connected with the

disciplinary punishment can also be justified if they are proportionate. The aim of such additional restrictions is the necessity of guaranteeing discipline and order at the institutions of deprivation of liberty.

Thus the restrictions of the rights of a convicted person shall only be such, which are aimed at guaranteeing execution of penalty and regime of execution of penalty.

7. Even though the submission includes the claim to assess the compliance of the impugned norm with Articles 92 and 104 of the Satversme, from the contents of the claim follows that conformity of the impugned norm with the first sentences of the above Articles is contested.

The first sentence of Article 92 of the Satversme establishes: "Everyone has the right to defend their rights and lawful interests in a fair court."

The first sentence of the Satversme Article 104 anticipates: "Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply".

The convicted person may realize the fundamental rights, envisaged in Articles 92 and 104 of the Satversme, by expressing his/her viewpoint in a written form. Restrictions to such rights may be envisaged only in cases and under the procedure established by Law.

In the claim it is requested to assess the conformity of the impugned norm also with Article 89 of the Satversme, which establishes: "the State shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia." In accordance with this norm the State shall guarantee efficient protection of the fundamental human rights as much as it is possible (*sk. satversmes tiesas 2003. gada 23. aprīļa sprieduma lietā No. 2002-20-0103 secinājumu daļas 5. punktu; see: the Constitutional Court April 23, 2003 Judgment in case No. 2002-20-0103; Item 5 of the concluding part*).

As the Constitutional Court has recognized " the State power, when passing normative acts, shall determine the procedure, which envisages applying of punishment only after thorough sizing up of the circumstances in the case and after the explanations of the offender are heard out. Besides, the severity of the punishment shall comply with the gravity of the offence and with the aim of infliction of the punishment. The procedure shall envisage the possibility of appealing against the punishment as well" (*sk. Satversmes tiesas 2002. gada 22. oktobra sprieduma lietā No. 2002-04-03 secinājumu daļas 7. punktu; see the Constitutional Court October 22, 2002 Judgment in case No.2002-04-*

03; *Item 7 of the concluding part*). Thus the possibility of disputing the decision on the infliction of a disciplinary punishment shall be ensured also for the convicted person.

To assess the compliance of the impugned norm with Articles 89, 92 and 104 of the Satversme, the real sense of this norm shall be established first of all.

8. The Constitutional Court has reiterated that interpretation of legal norms only on the basis of the grammatical method cannot be regarded as sufficient and other methods of interpretation shall be used as well (*sk., piemēram, Satversmes tiesas 2003. gada 4. februāra sprieduma lietā No. 2002-06-01 secinājumu daļas 3. punktu; see e.g. the Constitutional Court February 4, 2003 Judgment in case No. 2002-06-02; Item 3 of the concluding part*). Therefore in this case the systemic method of interpretation will also be used.

8.1. When interpreting the impugned norm grammatically, the sense of the term "letter" from the linguistic viewpoint shall be established.

The first Part of Section 74 of the Code determines that the convicted person, who is detained in solitary confinement, does not have the right of mailing letters. The Code does not give the legal definition of the term "letter". It can be found in Section 1 of the Postal Law: "Letter – an addressed postal item by which a private or an official communication in written form is sent in an envelope." However, interpretation of terms, used in separate normative acts, may differ; therefore the interpretation, used in one normative act shall not be regarded as useful for application of another normative act without the additional assessment of the sense of the term.

The impugned norm does not *expressis verbis* stress what letters it is forbidden to mail, namely, whether the convicted person, who is detained in a solitary confinement, is forbidden to mail letters only to private persons or whether it is forbidden to mail any letters, *inter alia* letters, addressed to State and local government institutions.

Thus, when interpreting the impugned norm only grammatically, one might conclude that Section 74 (the first Part) of the Code includes the prohibition of mailing letters not only addressed to private persons, but also letters to courts and other state and local government institutions.

8.2. When interpreting the impugned norm systemically, it shall be analyzed by reading it in conjunction with Sections 49 and 50 of the Code as well as other legal norms.

Already from its adoption the Code establishes a separate regulation with regard to correspondence of the convicted persons with private persons (Section 49) and to the right of the convicted persons to write submissions and complaints to State institutions, public organizations and officials (Section 50). As the Saeima points out, Section 49 of the Code has initially envisaged restrictions for mailing private letters depending on the fact at what type of the institution and under what regime the convicted person serves his/her sentence. In its turn no restrictions as concerns mailing of applications to State institutions, public organizations and officials have been included in Section 50 of the Code. The initial "attitude" is still maintained in the Code.

In accordance with Section 49 (the first Part) of the Code "convicted persons are allowed to mail and receive letters and telegrams without limitation". In its turn Part 1 of Section 50 of the Code determines: "the convicted persons are allowed to write proposals, submissions and complaints to State institutions, public organizations and officials. Proposals, submissions and complaints by the convicted persons shall be forwarded to the addressees and decisions on them shall be taken under the procedure established by law".

In the normative act, which regulates the rights and obligation of the arrested but not convicted persons, the term "letter" is used in a narrow meaning, not including submissions and complaints in it. Namely, Item 94 of the Cabinet of Ministers April 29, 2003 Regulations No. 211 "Regulations on the Internal Order of Investigatory Prisons" rules that the arrested persons, who are placed in a solitary confinement cell for disciplinary offence, are forbidden to mail and receive letters. In its turn in Item 95 it is explained that the above prohibition does not refer to appellate, cassation and neighboring complaints, which are envisaged in criminal procedure norms, as well as to submissions and complaints to the Procurator's Office, court or the Chief of the Department of Imprisonment Places.

Analyzing all the above legal norms in conjunction it can be concluded that the term "letter" in the Code is used only with regard to private correspondence of the convicted persons, but not to letters, which are addressed to courts and other State and local government institutions. For describing correspondence addressed to the above institutions other terms - "proposal", "submission", "complaint" and "request" – are used. Thus the words "to mail letters", which are included in Section 74 (the first Part) of the Code forbid the convicted person to mail letters only to private persons, but does not restrict his/her correspondence with courts and other State and local authority institutions.

The term "State institutions", included in Section 50 of the Code shall be interpreted in an extensive way, understanding by it both – the State and local authority institutions. Besides it should be stressed that ungrounded is the viewpoint of the Department of Imprisonment Places and several establishments of deprivation of liberty that if he/she is detained in a solitary confinement cell, the convicted person experiences the right of mailing proposals, applications and complaints only to the addressees mentioned in the second Part of Section 50 of the Code – UNO institutions, the Saeima Human Rights and Public Affairs Committee, the State Human Rights Bureau, Procurator's Office, court, defense counsel, but a convicted foreign state citizen – also to his/her State or the Diplomatic or Consular Department of the State, which is authorized to represent his/her interests. The second Part of Section 50 of the Code determines only the fact that correspondence with the institutions, mentioned in this norm is not subjected to control and mailing expenses are covered by the establishment of deprivation of liberty. In accordance with Section 50 (the first Part) it shall be ensured that the convicted persons have the possibility of mailing letters to all State and local authority institutions as well as to the officials.

Thus the impugned norm does not forbid the convicted persons to mail proposals, submissions and complaints to State and local authority institutions and thus it does not restrict the fundamental rights, determined in Articles 92 and 104 of the Satversme.

9. The submitter of the application holds that the impugned norm prohibits a convicted person, who is placed in a solitary confinement cell, to contest the decision on the infliction of the disciplinary punishment and thus restricts the rights, following from Article 89 of the Satversme on the most efficient protection of human rights.

In accordance with the sixth Part of Section 71 of the Code and Items 104.7 and 104.8 of the Cabinet of Ministers February 19, 2002 Regulations No. 73 "Regulations on the Internal Order of the Establishments of Deprivation of Liberty" disciplinary punishment - placement in a solitary confinement cell – may be inflicted on the convicted person only by a written decision of the chief of the Establishment of Deprivation of Liberty.

The third Part of Section 1 of the Administrative Procedure Law inter alia determines: administrative act is a decision regarding the establishing, alteration or termination of the legal status of, or the disciplinary punishment of persons specially subordinate to the institution, as well as other decisions if they significantly limit the human rights of these persons. In the judicature of the Supreme Court Senate it has been explained that by a person specially subordinate to the

institution shall be understood a person, who is more subject to different restrictions than other individuals and from whom specific legal obligations are required (*sk. Augstākās tiesas Senāta Administratīvo lietu departamenta 2004. gada 27. aprīļa lēmuma lietā No. SKA-80 11. punktu; see the Supreme Court Administrative Cases Department of the Senate April 27, 2004 Decision in case No. SKA-80; Item 11*). Thus the convicted person shall be regarded as a person specially subordinate to the establishment of deprivation of liberty and the decision on the infliction of disciplinary punishment is an administrative act. In accordance with Section 67 (the second Part) of the Administrative Procedure Law an indication as to where and within what time period such an act may be disputed or appealed shall be included in the decision.

The Constitutional Court draws the attention of the Cabinet of Ministers to the fact that the reference to the possibilities of disputing the decision has not been included in Supplements 13 and 14 of the Cabinet of Ministers February 19, 2002 Regulations No. 73 ” Regulations on the Internal Order of the Establishments of Deprivation of Liberty”, in which forms for decisions about the infliction of disciplinary punishment are inserted.

The convicted person may contest the inflicted disciplinary punishment to higher authorities (the fifth Part of Section 71 of the Code). In accordance with Section 2, Part three of the Law on the Department of the Imprisonment Places, establishments of deprivation of liberty are also within the structure of the above Department. Thus the convicted person may contest the decision on the infliction of the disciplinary punishment to the Chief of the Department of the Imprisonment Places and his/her decision may be appealed against to the court.

Section 77 of the Administrative Procedure Law determines that a submission regarding the disputing of an administrative act shall be submitted to the institution that has issued the administrative act. Thus the convicted person may contest the decision on inflicting of the disciplinary punishment by submitting a submission to the Chief of the Establishment of Deprivation of Liberty, who has taken the decision.

Thus the impugned norm does not forbid the convicted person to dispute the decision on infliction of the disciplinary punishment and does not restrict the rights to efficient protection of the fundamental rights, following from Article 89 of the Satversme.

10. It follows from the materials in the matter that the issue on the restrictions of correspondence of the convicted persons with State and local authority institutions has mainly been theoretical. The obtained

information testifies that the convicted persons have not complained about restrictions to mail submissions, complaints and other dispatches to State, local authority or other public institutions from the solitary confinement cell.

The Constitutional Court agrees with the submitter of the claim, that the legal norm, which determines restrictions to the fundamental rights of the person, shall be clear and precise. However, in any case the person, applying a legal norm, during the process of interpretation shall ascertain the real sense of the norm. Interpretation and applying of the impugned norm at the establishments of Deprivation of Liberty is not uniform, however, it cannot serve as the basis for declaring this norm as unconformable with the Satversme norms and null and void.

The operative part

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules:

- 1. To declare the words "to mail letters", incorporated in the first part of Section 74 of the Latvian Penalty Execution Code as conformable with Articles 89, 92 and 104 of the Republic of Latvia Satversme.**
- 2. The term "letters", included in the first part of Section 74 of the Latvian Penalty execution Code shall be interpreted in a narrow meaning – as "letters to private persons".**

The Judgment is final and allowing of no appeal.

The Judgment takes effect on the day of its publication.

The Chairman of the Court session

A.Endziņš