



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, June 27, 2003

JUDGMENT in the name of the Republic of Latvia

in case no. 2003 – 03 – 01

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Ilze Skultāne, Romāns Apsītis, Ilma Čepāne, Juris Jelāgins, Andrejs Lepse and Anita Ušacka

on the basis of the constitutional claims by Romualds Dobrovoļskis, Māris Sarāns and Sergejs Čerņikovs

under Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (the first part of Item 11) and Article 28¹ of the Constitutional Court Law

on June 3, 2003 at the Court session, holding the proceedings in writing

reviewed the case

”On the Compliance of Article 77 (Sentence Three of the Seventh Part) of the Criminal Procedure Code of Latvia with Article 92 of the Republic of Latvia Satversme”.

The establishing part

1. On October 17, 2002 the Republic of Latvia Saeima (henceforth – the Saeima) made amendments to the Latvian Criminal Procedure Code (henceforth – the Code), supplying Article 77 of the Law with the seventh part in the following wording: ”From the day of receiving the case at the court till the completion of its review at the first instance court, the term of the security measure – arrest, shall not exceed one

year and six months. At the end of the term the security measure – the arrest shall be revoked and the arrested person shall be immediately released. In exceptional cases i.e. – criminal matters of especially severe crimes, if they are connected with violence or threat of violence, the term of the security measure – arrest may be prolonged by the Supreme Court Senate”.

This legal norm took effect as of November 1, 2002.

- 2. The applicants of the constitutional claim** –Romualds Dobrovoļskis, Māris Sarāns and Sergejs Čerņikovs (henceforth – the applicants) challenge the compliance of Article 77 (the seventh part, sentence 3) of the Latvian Criminal Procedure Code (henceforth – the challenged norm) with Article 92 of the Satversme.

The applicants point out that because of several reasons the challenged norm restricts their right to a fair court. First of all it violates the presumption of innocence, as the only provision for extending the term of arrest is the graveness of the crime. In accordance with Article 5 (part three) of the Convention for the Protection of Human Rights and Fundamental Freedoms (henceforth – the Convention), courts, when analyzing the circumstances for determination of the arrest, shall be guided by the presumption of innocence. Secondly, the challenged norm restricts the right of the applicants to a fair court, as the judge, who is conducting the case, has asked the Republic of Latvia Supreme Court Senate (henceforth – the Senate) to extend the term of the arrest. Thirdly, the challenged norm does not envisage the possibility of appealing against the Senate decision to extend the term. The applicants hold that ”a fair court” includes the possibility of appealing against the decision of the court of the first instance at least at one more judicial instance. Fourthly, the right of the participant of the process – the defendant to express his/her viewpoint on the extension of the term of the arrest has not been ensured.

- 3.** In its written reply **the Saeima** disagrees with the viewpoint of the applicants that the challenged norm does not comply with Article 92 of the Satversme. Up to November 1, 2002 the norms of the Code envisaged terms of arrest only for pre-court investigation, but the term of arrest after submitting the case to the court was not limited. Therefore, when supplementing Article 77 of the Law with the seventh part, the aim of the legislator was to improve the status of the accused and arrested but not to determine additional restrictions.

The Saeima points out that in accordance with the presumption of innocence the defendant shall not prove his/her innocence, as proving the guilt is the obligation of the accuser. All doubts about the guilt of the defendant shall be assessed in favor of the defendant. However, it does

not follow from the presumption of innocence that arrest shall not be applied to the defendant, as the arrest is not a punishment, but means for ensuring court proceedings. To protect the state democratic system and the rights of other persons, restrictions, which are necessary for performing criminal procedural activities, shall be permitted as regards persons, who are to be presumed innocent to the moment of proving they are guilty (*see the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03*). The security measure – arrest shall be regarded as such a restriction.

The Saeima disagrees with the viewpoint of the applicants that the presumption of innocence is violated if the judge, who conducts the proceedings, asks to extend the term of the arrest. The judge, before adjudicating the guilt of a person in criminal offence, experiences the right of taking the decision on application, modification or extension of the term of the security measure. The Saeima holds that taking such a decision shall not be connected with interrogation of the witnesses, as well as it is not necessary to hear out the viewpoint of the defendant or his/her representative.

The Saeima points out that Article 92 of the Satversme does not envisage the right of appealing against any court decision to the court of higher instance. Article 6 of the Convention does not assign the task of introducing the appellate court system in all cases to the Contracting Parties. Thus the State itself may determine the amount of the principle of appellation in accordance with its legal system. When introducing the appellate court system the State may in the national law determine the categories of cases, to which the appellation instance is not envisaged. Article 2 of the Convention (of the 7th. Protocol) envisages that the person has the right of appealing against the court judgment, but not the decision, which has been reached before the announcement of the judgment.

The Saeima stresses that the legislator, when supplementing Article 77 of the Code with the 7th. part, determines: the decision on the extending of the term of the arrest after one year and six months shall be made by the Senate. The norm does not anticipate the right of appealing against the Senate decision. However, it does not deny the defendant the right of submitting new requests on vacating or amending the security measure to the court during the process of adjudication of the case.

4. When replying to the letter of the Constitutional Court, the Saeima additionally points out that the norm allows persons, who have been accused of commission of especially severe crimes, which are connected with violence or threat of violence, to claim release from the arrest, if a year and six months have passed and if the defendant with his behavior

has proved that he/she will not evade investigation, threaten or influence witnesses or commit another crime. The Saeima stresses that the legal norm refers only to the exceptional cases, enumerated in it and it does not allow automatic extension of the term of the arrest.

The Saeima explains that the challenged norm has been passed by taking into consideration both - the overload of courts, because of which the time of adjudicating cases has lengthened and the objective circumstances - the fact that the court has no possibility of adjudicating the case in a year and six months. If the legislator had not passed the challenged norm, one would have to take into consideration the possibility of the defendant deliberately prolonging the court process so as to await release from the confinement. However, if everybody, who is accused of especially severe and violent crime, will be released from the arrest, without taking into consideration their personality, both – the public security and the security of the witnesses might be endangered. As the challenged norm is applied only in exceptional cases, when qualitative assessment of the personality of the accused is needed, the legislator has entrusted the right of making the decision on the extension of the term of the arrest to the Senate.

The Saeima points out that the legislator, when passing the challenged norm, has considered also the issue on the maximum term of arrest during the process of adjudicating the case. However, the legislator concluded that every matter needs an individual approach and thus the extension of the term of arrest may be different. When anticipating the maximum extension term of the arrest the result might turn out to be adversary – not improvement of the organizing measures to adjudicate the matter in the shortest possible time but – on the contrary – delay because of the terms, determined by the procedural norms.

- 5. Pāvels Gruzīņš – the Chairman of the Criminal Case Department of the Supreme Court Senate**, when answering to the issue of the Constitutional Court, points out that the arrest – as the security measure, which restricts human rights most of all, is applied to persons, who are suspected of evading from investigation or putting obstacles to the proceedings. Such a security measure is needed to ensure proceedings in reasonable terms.

P.Gruzīņš explains that the law does not determine how the notion "exceptional cases", incorporated into the challenged norm shall be interpreted. Since November 1, 2002 the notion "exceptional cases" in the Senate case law depends on the specifics of violence or threat of violence, the number of the victims, number of criminal episodes, crime recidivism, indefinite lodgings as well as earlier and not extinguished

convictions. In every particular matter the choice of the arrest as the security means is based on estimate of the personality.

To the mind of the judges of the Criminal Case Department of the Supreme Court Senate the challenged norm improves the state of the defendants and does not worsen it.

- 6. The Head of the Group Elaborating the draft of the Latvian Criminal Procedure Code Gunārs Kūtris** points out that the challenged norm is not at variance with Article 92 of the Satversme or the international legal norms. The arguments, mentioned in the constitutional claims of the applicants were expressed because of inexact interpretation of the law. He explains that the third part of Article 5 and the first part of Article 6 of the Convention envisage that everyone arrested, detained or accused is entitled to a fair hearing within a reasonable time. However, no normative act interprets the notion "reasonable time", as it shall be assessed in every particular matter and depends on the specifics of the crime and personality of the accused.

G.Kūtris explains that the procedure of envisaging the maximum term of the arrest has historically developed in Latvia. Up to November 1, 2002 Article 77 of the Law envisaged the maximum term of the arrest for the process of pre-trial investigation. With the court workload increasing, the time of adjudicating cases has essentially increased in Latvia. To avoid extended period of detention of the arrested persons and to ensure fair hearing within a reasonable time, the legislator determined a restricting norm also with regard to the term of arrest during the adjudication stage. However, the legislator has envisaged the possibility of extending the term of the arrest if because of different causes (a complicated scheme of the crime, many episodes, a great number of the accused, deliberate delay of the process etc.) more time for adjudication of the matter is needed and the reasons for keeping the defendant under arrest are still present. Only the Senate experiences the right of taking the decision on the extension of the term of arrest.

G.Kūtris additionally points out that the challenged norm is not unconformable with the presumption of innocence, as the judge, when taking the decision on application of the security measure or the extension of the term does not settle the issue on the guilt of a person in the commission of crime. However such evidence shall be collected in any particular case, which convinces the judge of taking the decision on the application of arrest, namely, evidence that the particular person is potentially guilty.

G.Kūtris points out that the seriousness of the crime is only one of the criteria for choosing the security measure. The Senate repeatedly weighs

the circumstances for extending the term of the arrest. Simultaneously it is the control of the Supreme Court over the performance of the courts of lower instances as - without interference in the process of adjudicating the matter- the substantiation of the restriction of human rights is checked. Thus it is possible to avert cases when the person is being continuously kept under arrest because of bad organization of the court performance, ungrounded delay of the process or other unjustifiable reasons.

7. After getting acquainted with the materials in the case the **applicants** additionally explained that when realizing the challenged norm, the right of a person to a fair and impartial court is not ensured. They point out that during the process of pre-trial investigation the arrest is applied after hearing out the viewpoint of both – the procurator and the suspect. In a similar way are also reviewed the claims on the activities of the judge. During the process of adjudication of the matter the Senate – on the request of the court, which reviews the matter - takes the decision on the extension of the term of the arrest. The request contains reasons of the necessity of the extension of the term of arrest, but the arrested person has no right of expressing his/her viewpoint on the reasons.

The applicants also point out that the main reason for passing the challenged norm has been the great workload of the courts. However, such a reason – neither in the understanding of Article 92 of the Satversme nor that of Articles 5 (the third part) and 6 (the first part) of the Convention - can serve as justification for the extension of the term of arrest.

The applicants hold that Article 92 of the Satversme includes the right of the person to appeal against partiality of the court during the court process; therefore decision on the extension of the term of arrest during the process of adjudication shall be taken by a court instance, which is lower than the Senate.

Besides, the applicants repeatedly stress that the challenged norm is unconformable with the presumption of innocence. Making references to the European Court of Human Rights November 18, 2002 Judgment in case "*Lavents v. Latvia*", they point out that the national instances (courts) shall be guided by the principle of presumption of innocence and analyze all circumstances when determining the period of the confinement or its extension. After some time even the validity of suspicion is insufficient to continue keeping the persons under arrest.

In addition to the above the applicant M.Sarāns points out that it is not clear how the state of those arrested persons, who are accused of commission of especially severe crimes, which are connected with

violence or threat of the latter, is being improved. The challenged norm does not determine the maximum term for keeping persons in confinement, therefore the confinement may last till the maximum term established by the Criminal Code. M.Sarāns also holds that the Senate - to take an impartial decision on the extension of the term of the security measure - shall ask from the place of imprisonment a reference on the arrested person.

The concluding part

1. The application includes the claim on the compliance of the challenged norm with Article 92 of the Satversme, however from the contents of the application and materials, which the applicants submitted after getting acquainted with the case, follows that the conformity of the first and second sentences of Article 92 of the Satversme, namely, that "everyone has the right to defend their rights and lawful interests in a fair court. Everyone shall be presumed innocent until their guilt has been established in accordance with law" shall be evaluated.

The Constitutional Court in some of its Judgments (*see e.g. the Constitutional Court March 5, 2002 Judgment in case No. 2001-10-01; February 4, 2003 Judgment in case No. 2002-06-01*) has concluded that the notion "the fair court", incorporated into Article 92 of the Satversme, includes several mutually interconnected aspects. One of them is the "fair court" as the appropriate process in a law-based state in which the case is being reviewed. In this aspect the concept "a fair court" shall be read together with the principle of justice, which follows from Article 1 of the Satversme. Thus Article 92 of the Satversme requires creating the system in the State under which the court shall review criminal matters in the procedure, ensuring fair and impartial adjudication of the matters.

To assess the compliance of the challenged norm with Article 92 (the first sentence) of the Satversme, one has to establish whether the process, which conforms with the "fair court", includes:

- 1) adjudication of the case in a reasonable time;
- 2) the right of the defendant to express his/her viewpoint on the extension of the term of the arrest;
- 3) the right of the defendant to appeal against the decision of the Senate on the extension of the term of the arrest.

Taking into consideration Article 89 of the Satversme, which establishes that the State shall recognize and protect fundamental human rights in accordance with the Constitution, laws and

international instruments binding upon Latvia and the fact that the objective of the legislator has not been to differentiate between the norms of the human rights, included in the Satversme and the international human rights norms, but – quite to the contrary – to create mutual harmony of these norms (*see the Constitutional Court January 17, 2002 Judgment in case No. 2001-08-01*), it can be concluded that Article 92 of the Satversme guarantees minimum of rights, enshrined into Articles 5 (the fourth part) and 6 (the first and the second parts) of the Convention.

3. The second sentence of Article 92 of the Satversme determines the obligation of the court to observe the presumption of innocence. It means that the court and its officials, when carrying out their duties, to the moment of the announcement of the judgment may not voice the assumption that the defendant is guilty in the commission of the crime, like a procurator does to the moment, when the case is submitted to the court. Proof and determination of guilt takes place only at the court session, when reviewing the case on its merit.

Even though the arrest restricts one of the most important human rights, namely, the right to liberty, in cases determined by law the court may apply the above restriction. However, when adjudicating the issue on the arrest, the court – by taking into consideration the presumption of innocence- shall first of all assess, whether there exist well-grounded suspicions that the defendant has committed a crime. Besides, the decisions on extending the term of the arrest of both – the court, which reviews the criminal case and the Senate – shall be based upon legal norms, including Article 92 of the Satversme, and impartial circumstances of the matter. First of all one should take into consideration that if the person is kept under arrest for a long time, suspicions on the committed crime shall be based on more definite circumstances than those, which are sufficient for detention of the person or his/her arrest. Secondly, the court has to evaluate the personality of the defendant so as to make out whether- when set free- he/she will not hinder the process of adjudicating the matter, endanger the public interests and security. Thirdly, the obligation of both – the court, which reviews the matter and the Senate – is to remember that the case has not been reviewed on its merit and any doubt about the established circumstances shall be interpreted in favor of the defendant. The European Court of Human Rights in the case "*Lavents v. Latvia*" has pointed out that the justification of the decision to keep a person under arrest for a long time shall be assessed in every particular case by taking into consideration the specifics of the circumstances. Keeping a person under arrest for a long time may be justified only in cases if there exist direct references to the fact that there is a real public interest, which – by taking into consideration the presumption of innocence – is more important than the right of a person to liberty, guaranteed by Article 5 of the Convention (*see the European Court of Human Rights November 28, 2002 Judgment in case "Lavents v. Latvia"*).

As the challenged norm does not require assessment of the guilt of the defendant, one may agree with the viewpoint expressed by the Saeima that by asking the Senate to extend the term of the arrest in case there are well-founded suspicions on the submission of the crime by a person and if the court in its request has not mentioned the guilt of the arrested person then the judge has not violated the presumption of innocence.

Thus the challenged norm does not object to observing of the presumption of innocence by the court.

4. To establish whether the challenged norm does not hinder the court to review the case in a reasonable time, the contents and aim of the norm shall be analyzed.

One may agree with the viewpoint of the Head of the group, elaborating the draft of the Latvian Criminal Procedure Code, G.Kūtris that because of overload of the courts the time of adjudication of cases has considerably increased. To avoid ungrounded and extremely long keeping persons under arrest, the legislator supplemented Article 77 of the Code with the seventh part. The first two sentences of it determine the maximum term of keeping persons under arrest for the period of adjudicating the case at the court of the first instance. However the legislator has envisaged also an exception of the procedure by determining that the Senate may extend the term of arrest in cases, determined by the challenged norm.

Even though the challenged norm does not determine the maximum term of arrest, it does not prevent the court to adjudicate the case in a reasonable time as neither the court, which requests extension of the term of arrest, nor the Senate may groundlessly apply the norm. When evaluating the terms of adjudicating the case to the time of the court judgment, the European Court of Human Rights case law concludes that in criminal matters the court shall assess everything: the complication of the case, behavior of the defendant and the activity of the competent institution (the court). The European Court of Human Rights has always paid special attention to the fact whether the state institutions and officials are to be blamed for not reviewing the case in due time (*see Grosz S., Duffy P. Q.C. Human Rights. The 1998 Act and the European Convention, Sweet and Maxwell, London, 2000, p. 249*).

When extending the term of the arrest, the Senate shall also observe the above. Therefore the Senate has to thoroughly and from every point of view evaluate both - the reasons for the necessity of extending the term of the arrest, submitted by the court and the activity of the court in adjudicating the matter and reflecting the arguments in their decision. Special attention shall be paid to the reasons, which have not allowed

the court to adjudicate the matter in the previously determined term of arrest. If it is established that the court session has not taken place because the court is overloaded with other cases then the extension of the term of arrest will be unlawful. A similar viewpoint has been expressed by the Czech Republic Constitutional Court, which holds that overload of the courts cannot serve as legal justification of the fact of non-observation of the right of the persons to adjudication of the case in due time (*see the Czech Constitutional Court November 10, 1998 Judgment in case No.US 358/98*). In its turn the European Court of Human rights in several judgments has pointed out that the first part of Article 6 of the Convention makes the Contracting States responsible for ensuring the performance of their court systems in such a way that the courts shall observe all the provisions, including the obligation of adjudicating cases in due time (*e.g. see the European Court of Human Rights September 16, 1996 Judgment in case "Süßmann v. Germany"*).

Well-grounded is the viewpoint of the Saeima that because of objective reasons court is not always able to adjudicate the matter in a year and a half (like on especially severe crimes, connected with violence or threat of violence). One can mention such reasons as the behavior of the defendant, which may delay adjudication of the case, complicated examination by the body of experts or other objective reasons. Otherwise, if the challenged norm were not passed, the defendants could deliberately delay the court process so as to await discharge from the prison. Besides, by discharging the person from imprisonment without assessment of the personality of the defendant, both – the security of the witnesses and that of the public might be endangered.

Thus the challenged norm does not deny the right of the defendant to review of the matter in reasonable time.

5. One may agree with the viewpoint of the Saeima that Article 92 of the Saeima does not envisage appealing against any court decision to a higher court instance. Article 6 of the Convention also does not assign the states with the duty of introducing the appellate court system in all cases. Thus the state itself may determine the range of the right to appeal, which is in compliance with its judicial system. When introducing the system of appellate courts the state in its national law may determine the categories of matters, which cannot be appealed to the courts of the second instance. The only precisely formulated provision on appeal is incorporated into Article 2 of the Convention Seventh Protocol, which guarantees that everyone convicted of a criminal offence shall have the right to have the sentence reviewed by a higher tribunal. Besides the second part of this Article permits restrictions to the right, namely, this right may be subject to exceptions in regard to offences of a minor character or in cases in

which the person concerned was tried in the first instance by the highest tribunal. Thus the state is obliged to guarantee the possibility of appeal only in regard to severe criminal matters.

The Constitutional Court has acknowledged that Article 92 of the Satversme establishes a wider scope of the right to appeal than that envisaged in Article 6 (the first part) of the Convention and Article 2 of the Seventh Protocol of the Convention, namely the right to appeal against the court decision in any criminal or administrative matter (*see the Constitutional Court June, 20, 2002 Judgment in case No. 2001-17-0106*). However, such an extended range of the right to appeal shall not be applied to the cases, envisaged in the challenged norms. First of all, the particular criminal case is not reviewed on its merit by the Senate decision to extend the term of the arrest. Secondly, the Senate decision on the extension of the term of arrest is taken only in exceptional cases, when all the possible existing circumstances are thoroughly evaluated (*see Item 4 of the concluding part of the above Judgment*). Thirdly, the challenged norm establishes that the decision on the extension of the term of the arrest shall be made by the Senate – the highest court instance of the State. Thus we may say that the right of the State to determine, what court decisions may be appealed against to the higher instance court, established in the European Court of Human Rights case law, has been realized.

One has to take into consideration that the challenged norm does not deny the defendant the right to submit requests on revoking the security measure. Besides, the European Court of Human Rights has concluded that examination of lawfulness of the arrest may not depend on the request of the arrested persons, judicial control must be automatic and in the shortest possible terms, especially, if the person has been continuously kept under arrest (*see the European Court of Human Rights July 4, 2000 Judgment in case No. "Niedbala v. Poland" and October 25, 1989 Judgment in case "Bezicheri v. Italy"*).

Thus the challenged norm, which does not envisage for the defendant the right of appealing against the Senate decision, does not violate Article 92 of the Satversme.

6. The notion of the fair court incorporates also the principle of equality of the parties. It envisages, first of all, that all the parties, involved in the process shall have the possibility of expressing the circumstances in the case and, secondly, it prohibits endowing one of the parties with essential advantages as compared to the opponent (*see Law and Practice of the European Convention on Human Rights and the European Social Charter, Council of Europe, 1996, p. 172*). As the process of the criminal matter, which commences on the moment of

initiating the case and is completed with the final judgment of the court instance taking effect, is undivided, the above principle shall be observed in any stage of criminal proceedings, also when reaching the decision on the extension of the term of the arrest.

- 6.1. The right of being heard out follows from the principle of justice, which includes all the guarantees of the court process. Namely, all evidence shall be accessible to persons, involved in the case: the possibility of inviting witnesses and equal possibility to put questions to them, the obligation to hear out every party only in the presence of the other party; the right to representation; the possibility of expressing one's viewpoint on all the issues, facts and legal norms.

The right of the defendant to be heard out is one of the most important procedural guarantees of the arrested person and it follows not only from Article 6 of the Convention but in regard to application of the security measure – the arrest directly from the fourth part of Article 5 of the Convention.

This right is realized in several ways, for example, as the right of receiving full information on the viewpoint, expressed by the other party and the collected evidence and facts, as well as the right to expect that the court decision – after taking into consideration the viewpoint expressed by the parties - will be substantiated. Besides, the right to be heard out includes also the right of the person to express his/her viewpoint on facts and legal issues. Implementation of this right at least in the written form shall be ensured.

The European Court of Human Rights in many of its judgments has pointed out that the defendant shall be heard out before taking the court decision. Thus, for example, the Court concluded that sufficient means for hearing the person out could be the possibility of expressing the viewpoint in a written form. However - as concerns the particular case – nothing proves that the arrested person has been given the above possibility (*see the European Court of Human Rights October 21, 1986 Judgment in case "Sanchez – Reisse v. Switzerland"*). In its turn in the case "*Assenov v. Bulgaria*" the European Court of Human Rights declared that Bulgaria has violated the fourth part of Article 5 of the Convention as the decision on leaving the arrest in effect was taken without asking the defendant to submit explanations, thus not giving him the possibility of explaining his reasons for the request of discharging him from the arrest (*see the European Court of Human Rights October 28, 1998 Judgment in case "Assenov V. Bulgaria"*).

However the challenged norm, when envisaging the right of the Senate to extend the term of the arrest after a year and six months, does not determine the right of the defendant to participate at the court session or express his/her viewpoint in another way.

Even though several norms of the Code envisage that the arrested person shall be invited or he/she may be invited to the court of the first or the second instance if it takes a decision on extending the term of arrest or leaving the decision in effect (the fourth part of Article 76, the second part of Article 77, the third part of Article 222¹ and the second part of Article 226) however the Code does not directly regulate the procedure of extending the term of the arrest at the Senate.

In its turn from the Senate decisions on the extension of the term of arrest, which are in the materials of the case it can be seen that the persons have not participated at the Senate organizational session and before taking the particular decision their viewpoint has not been found out, namely, the right of the defendant to be heard out was not ensured.

- 6.2.** The principle of equal opportunities forbids endowing one of the parties with essential privileges as compared with those of the opponent. Therefore the European Court of Human Rights in several of its cases has evaluated the role of the court, procurator or other official in the court process to find out whether any official cannot be regarded as the "party" in the particular case. If any of the above officials has several functions in a particular criminal matter then its impartiality may be doubted. For example, in the case "*Niedbala v. Poland*" the European Court of Human Rights concluded that the procurator, who carried out the functions of investigation and later – those of the prosecution was one of the parties of the criminal action. Thus, when taking the decision on whether application of the arrest is justifiable, doubt on the independence and impartiality of the procurator arises (*see the European Court of Human Rights July 4, 2000 Judgment in case "Niedbala v. Poland"*).

The court, under whose jurisdiction the particular matter is, may request the extension of the term of arrest after a year and six months. When submitting the request to the Senate, the court shall substantiate why it is necessary to extend the above term. As one is able to notice elements of the "party" of the court process in the activities of the court, the "other party", namely, the defendant shall be ensured equal rights. Thus the defendant shall be given the possibility of getting acquainted with the conclusions of the court on the issue of extending the term of arrest and be given the floor for defending himself/herself. However, neither the norms of the Code,

nor the case law of the Senate on the extension of the term of arrest give proof of the insurance of the above right. Thus the principle of equal opportunities is being violated.

Thus the challenged norm does not guarantee the right to a fair court, which is established by Article 92 of the Satversme.

7. When reaching the decision on the moment of the challenged norm losing effect, the Court takes into consideration the fact that the procedure under which the right of the defendant to be heard out shall be determined by the law. However, up to the time of passing the particular legal norm at the Saeima, the Senate, when taking the decision on the extension of the term of the arrest, shall ensure realization of the right of the defendant to be heard out, which is guaranteed by Article 92 of the Satversme.

The substantive part

On the basis of Articles 30 – 32 of the Constitutional Court Law the Court hereby **rules**:

to declare Article 77 (the third sentence of the seventh part) of the Criminal Procedure Code as **unconformable with** Article 92 of the Satversme and **null and void** as of October 1, 2003 if the procedure for insurance of realization of the right of the defendant to be heard out is not determined by the law.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session

A.Endziņš