THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, October 22, 2002

JUDGMENT
in the name of the Republic of Latvia

in case No. 2002-04-03

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, justices Ilze Skultāne and Anita Ušacka

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Paragraph 3 of Article 16 ; Articles 17 (Paragraph 11 of the first part), 19^2 and 28^1

on the basis of the constitutional claims by Valdis Strautnieks and Kaspars Zandbergs

holding the proceedings in writing

reviewed the case

"On the Compliance of Items 59.1.6, 66 and 68 of the "Regulations on the Internal Order of the Investigatory Prisons" with Articles 89, 95 and 111 of the Satversme"".

The establishing part

1.1 Before losing the state independence, the status of persons finding themselves in pre-trial detention in Latvia, was determined by the Law "On Imprisoned Persons". The Law referred both to the execution of the punishment and means of security and public protection. Article 191 of the Law established that " pre-trial detention is an act used to avert the possibility of the detained persons escaping from investigation and court as well as

concealing evidence of the crime. In the places of detention only such restrictions shall be imposed on the detained persons, which help in averting hindrance of investigation and which are necessary to guaranty order and security.” Provisions, to be applied to the accused persons were enumerated in the Law, however exceptions were also named in the Law.

Provisions on maintenance of order and security determined in Articles 137 – 147 were to be applied to the accused persons. Article 140 established disciplinary sanctions, among them also ”placement into a light solitary confinement place up to two weeks” and ”placement into dark solitary confinement cell up to a week”. When placing the accused person into light or dark solitary confinement cell the prohibition to keep books, newspapers, other publications, exercise-books, stationery and other things, meet relatives and other persons, receive food parcels, use personal or earned money as well as use bedding was applied to the imprisoned.

Disciplinary punishment was imposed by the head (chief) of the place of detention or imprisonment, after hearing out explanations of the offender and clarifying of the circumstances of violation. The chief of the place of imprisonment had to inform the prosecutor or judge about the disciplinary punishment imposed on the accused persons.

1.2 On August 29, 1991 the Republic of Latvia Supreme Council adopted the Decree ”On Application of the Republic of Latvia Legislative Acts in the Territory of the Republic of Latvia”. It determined that up to the time of passing particular Republic of Latvia codes or other legislative acts, several normative acts of the Latvian SSR , among them also the Latvian SSR Criminal Procedure Code (henceforth – CPC) shall be applied in the Republic of Latvia territory.

At that time the tenth Chapter of CPC ” Short Term Detention and Pre-trial Detention” among other things determined also the ground for pre-trial detention, places of pre-trial detention, the legal status of persons detained at the pre-trial places, the basic demands of the regime, rights and duties of the detained persons as well as means of stimulation and punishment, to be applied to the detainees. The second part of CPC 427 Article determined that ” with the motivated decision of the head of the place of pre-trial detention the detained persons (adults), who maliciously violate the requirements of the regime may be put into punishment cell for up to ten days, but the juveniles- up to five days”.

1.3. On February 5, 1992 the Republic of Latvia Supreme Council passed the Law ”On Amendments and Supplements to the Latvian Criminal Procedure Code and Latvian Administrative Violation Code”, and, considering that the procedure of detaining persons at the pre-trial places is not the issue of CPC, deleted the above Chapter.

At the same time Chapter VI of the CPC, which regulates security measures including arrest, was retained. Article 68 of the CPC, which is still valid, determines the right of applying security measures ”if there exists a possibility that the accused or the defendant if he/she is free, shall evade of investigation and appearing before court or shall hinder ascertaining truth in a criminal case, as well as might endanger or influence witnesses in a criminal case or commit a crime and in order to ensure execution of the judgment ”.

On June 30, 2002 the Saeima adopted the Law ” Amendments to the Latvian Criminal Procedure Code ”, which took effect on November 1, 2002. The Law supplements CPC Article 76 with the fifth and sixth parts in the following wording:

”The detained persons are held in the investigation prison or in the investigation section of the prison of some other type. The detained soldiers may be kept in the guardhouse.

The procedure of confinement and placement, the daily regime, rights and duties, medical care and material collateral, security measures as well as the procedure under which the detained persons are discharged from the investigation prison or removed to another place of deprivation of liberty shall be determined by the Cabinet of Ministers.”

1.4. When renewing the state independence, Latvia inherited the system of the places of deprivation of liberty from the Soviet regime, which were subordinated to the Home Office. At the time, when the Republic of Latvia Satversme (henceforth – the Satversme) Chapter VIII ”The Human Rights” took effect, the procedure of the regime was determined by the Minister of the Interior April 30, 1994 Order No.113 ”Instruction on the Procedure of Detaining the Suspected, Accused and Convicted Persons at the Ministry of the Interior Investigation Prisons”.

1.5. On January 1, 2000, on the basis of the Law ”On the State Budget for 2000” and the Protocol decision of the Cabinet of Ministers December 21, 1999 session ” On the Assigning of the Department of Confinement Places and Institutions Subordinated to it to the Supervision of the Ministry of Justice”, the Ministry of the Interior ”passed” the Department of the Confinement Places and the institutions subordinated to it in charge of the Ministry of Justice.

1.6. On May 9, 2001 by the Directive No. 1-1/187 of the Minister of Justice the ”Transitional Provisions on the Procedure for Detaining the Suspected, Accused and Convicted Persons at the Investigation Prisons” (henceforth – the Transitional Provisions) were approved. Chapter V of the Provisions ”Inducement, punishment and the procedure of their application” envisages that for violation of discipline and the internal order of the investigation prison, adult prisoners may be

detained in the punishment cell. Only those imprisoned and convicted persons, who have grossly or systematically violated the regime, determined for the investigation prison may be placed in the punishment or disciplinary cell.

Item 43 of the Transitional Provisions envisages that gross violations of the regime are: 1) physical resistance against the employees of the prison; 2) coercion or other kind of degrading of other detained persons; 3) using, keeping or distribution of alcoholic beverages, narcotics or other forbidden psychotropic drugs; 4) participation in card games or other games to acquire material or other benefit and extortion of winnings; 5) refusal to discharge a legitimate demand of the employee of the prison; 6) deliberate damaging of the prison property. Two or more violations of the internal order (regime) shall be regarded as systematic violations of the regimen, if during the last six months the disciplinary punishment has been inflicted for the previous transgression.

In its turn Article 44 of the Provisions determines that " the Internal Rules of the Investigation Prisons" shall regulate compiling of the list of those officials, who experience the right of applying inducements and inflict disciplinary punishment as well as determine the range of their authority". On May 9, 2001, the Minister of Justice with her Decree No.1-1/187 (Item 2) charges the Chief of the Department of the Places of Confinement V.Zahars with the task of elaborating and confirming "The Regulations on the Internal Order of the Investigation Prisons" up to May 14, 2001.

1.7. The Chief of the Department of the Places of Confinement V.Zahars confirmed the above Regulations by his May 9, 2001 Order No.63. The Regulations on the Internal Procedure of the Investigation Prisons incorporate Chapter VII "Officials who shall Apply Inducement and Inflict Disciplinary Punishment". In accordance with Item 59.1.6. only the Warden of the prison may take the decision of placing adult prisoners in the punishment cell up to 15 days.

Item 64 of the Regulations envisages that " the detained person may take with him/her things for personal hygiene as well as all notes and documents in the criminal case. Toilet accessories are kept in a separate space and are handed out only in times envisaged for toilet".

Item 66 of the above Chapter determines that "personal things of the detained person and food-stuffs shall be left in the store-room and be returned only after discharging the person from the punishment cell. If the food stuffs get spoiled then an act is drawn up (if possible in the presence of the detained person) and on the basis of the conclusion by the medical official the food stuff is destroyed".

In its turn Item 68 establishes that ”all the envisaged measures of punishment and security measures, also the repeated placement into the punishment cell may be applied to the detained persons, who violate the regime determined for the punishment cell. The last day of the previous punishment shall be regarded as the beginning of infliction of a new punishment – repeated placement into the punishment cell.

2. **Submitters of the constitutional claim –**Valdis Strautnieks and Kaspars Zandbergs (henceforth – the submitters) in their application challenge the conformity of Items 59.1.6, 65, 66 and 68 of the ”Regulations on the Internal Procedure of the Investigation Prisons” (henceforth – the challenged act) with Articles 89, 95 and 111 of the Satversme.

The Constitutional Court panel No.4 initiated a case on the compliance of Items 59.1.6, 66 and 68 (henceforth – the challenged norms) of the act with Articles 89, 95 and 111 of the Satversme. As concerns challenging of Item 65, the Constitutional Court panel No.4 has concluded that the legal motivation mentioned in the claim is evidently insufficient to satisfy the appeal.

From the claims as well as from the viewpoint of the submitters follows that confinement in a punishment cell or solitary confinement cell can be considered as cruel, inhuman and degrading treatment and should be qualified as torture, because:

1.) The challenged act envisages that before placement in the punishment cell the food stuff is taken away from the detainees, but in the punishment cell they do not receive the minimum daily norm.
2.) There is no drinking water in the punishment cell. They have to use flushing water for drinking.
3.) The temperature, which has to be ensured for a room, is also lower, but the challenged norms forbid the detainees to take the blanket and warm clothing with them.
4.) It is not possible to observe personal hygiene, as one and the same clothing has to be worn to the end of the term of confinement in the punishment cell (regardless of the length of the term).
5.) In some single- seater punishment cells several arrested persons are kept and the only bench is used by turns. Besides for sitting on the floor the arrested persons are inflicted with another disciplinary punishment. Thus, placement into the punishment cell means continuous standing. K.Zandbergs states that he has been placed into a cell with a concrete floor without the bench to sit on during the day, even at meal times he has had to stand.
6.) Several arrested persons are placed into a solitary confinement cell and the only sleeping place may be used in turn. Besides it is almost

impossible to fall asleep as it is forbidden to use a mattress, a pillow and a blanket.

7.) The possibility of inflicting a new disciplinary punishment means that the prisoner may have to undergo an unlimited disciplinary punishment and to the mind of the submitter it is at variance with the principle of fairness.
8.) The challenged norms also prohibit the prisoner to take textbooks and religious literature to the solitary confinement or punishment cell as well as do not allow meeting the chaplain. Thus, the imprisoned have to backslide from their religious conviction and freedom of consciousness.
9.) The applicant holds that the challenged norms do not envisage the possibility of complaining to ensure application of a well-grounded and fair disciplinary punishment. As it is also prohibited to keep stationary and paper in the punishment cell, there is no possibility of experiencing the rights, incorporated into Article 15 of the Law "On the Public Procurator's Office" and realizing correspondence with other state institutions.

The submitters point out that the challenged norms are unconformable with Articles 95 and 111 of the Satversme and also with international instruments – Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with Item 37 of the Regulations on European Penitentiaries (Recommendation No.R /87/ 3). Thus the norms are also unconformable also with Article 89 of the Satversme.

K. Zandbergs also stresses that the challenged act does not comply with the Convention, which forbids subjecting persons to torture and other cruel, inhuman and degrading forms of punishment.

The submitters hold that placement of the imprisoned in the solitary (punishment) cells endangers both - their physical health (because of lack of food and drinking water) and their mental health. The submitters point out that V.Strautnieks attempt of committing suicide was just the result of his placement into the punishment cell.

K.Zandbergs points out that it is forbidden to use stationery in the punishment cell even when preparing for defense and working with the materials in criminal case.

He also stresses that placement into the punishment cell means prohibition to write to one's relatives and states that his relatives had been forbidden to inform him about his mother's death on November 31, 2001.

3. **The institution, which has passed the challenged act –** the Department of the Places of Confinement – in its written reply points

out that the challenged act has been adopted to implement the Transitional Provisions and is in compliance with it. They hold that the challenged act only specifies the order and conditions under which the persons, to whom the security measure, envisaged by the Criminal Procedural Code – the arrest has been applied, as well as those, who have been sentenced to imprisonment in cases established in the Latvian Penalty Code are kept in investigation prisons or investigation sections of the places of deprivation of liberty.

It is stated in the written reply that the Department of the Places of Confinement, when elaborating the challenged act has been guided by the norms of the Transitional Provisions and the requirements, advanced in the regulations on minimum standard provisions for the regime of the imprisoned in the European prisons.

Even though the person authorized by the Department of the Places of Confinement acquainted himself with the case after it was decided to hold the court process in writing, the above Department has not submitted its viewpoint on the case.

4. When preparing the case for review, conclusions by the Minister of Justice, the Deputy State Secretary on the issues of legislature of the Ministry of Justice, the Republic of Latvia Prosecutor General's Office and the State Human Rights Bureau have been received.

The Minister of Justice I.Labucka expresses the viewpoint that in compliance with Article 16 of the Cabinet of Ministers Structure Law the Department of the Places of Confinement independently realizes the functions assigned to it by the state and are responsible about their implementation. The Transitional Provisions, which have been confirmed on the basis of Article 15 (Item 2) of the Cabinet of Ministers Structure Law, regulate only the general procedure of keeping persons in investigation prisons, but its specification has been delegated to the Department of the Places of Confinement.

The Minister of Justice expresses the viewpoint that the warden of the prison may use the disciplinary punishment of placement of the imprisoned person in the punishment cell as the final measure against persons, who have maliciously violated the rules of internal order of the prison when all the other forms of punishment have not given a positive result.

The Ministry of Justice informs that in the places of detention in Latvia there are no punishment cells. The solitary confinement cells are usual cells, in which those arrested persons, who have grossly and systematically violated the regime determined for the investigation prison, are placed for a certain time (up to 15 days) and are kept isolated from the other detainees. The punishment cell

has natural lighting. The cell is not smaller than 1,8 x 2,5 meters. In difference from the other imprisoned persons, to those placed in the punishment cell for disciplinary violations are applied partial restrictions of meeting, buying foodstuffs, sending letters and using table games, as well as taking with them personal things and foodstuffs (with an exception of hygiene necessities and all notes and documents in the criminal case). The things and foodstuffs are left in the prison store-room and are returned to the arrested person immediately after his/her discharge from the punishment cell. The arrested persons, placed into the punishment cell, receive warm food three times a day and they receive food, determined by the doctor if their state of health requires it.

The Deputy State Secretary on the issues of legislation of the Ministry of Finance G.Kūtris, when answering the questions of the Constitutional Court justice, stresses that the status of a convict has been regulated on the level of the law. Even though the court has not passed a verdict that the arrested persons are guilty, it has decided that limitation of their freedom is both – well-grounded and necessary. Thus, there has to be an analogically regulated procedure with regard to the detained and arrested persons, as, when placing the person in the investigation prison, the state keeps watch over them and undertakes the care on feeding, medical care and security of them, which means ensuring a certain internal order.

G.Kūtris informs that the Transitional Provisions have been passed to eliminate the legal vacuum. At the moment it is the only normative act, which determines the procedure, to be implemented in the investigation prison by its administration. The Cabinet of Ministers draft Regulations of ”The Internal Order of the Investigation Prisons” have been elaborated. It is planned to pass the act after the norms of CPC take effect. The norms envisage that the Cabinet of Ministers experiences the right of passing the above Regulations. In its turn, together with the new Criminal Procedural Law taking effect, a specific law on regulations, governing the imprisonment of the inmates, elaboration of which has already begun at the Ministry of Justice, might become effective.

The Republic of Latvia Procurator General’s Office expresses the viewpoint that the challenged norms do not violate the requirements of the Satversme.

The Procurator General’s Office points out that the above norms envisage placement into the solitary confinement cell, which cannot be compared with the placement in the punishment cell, prohibited in the international norms. On November 6, 2001 the Chief of the Department of Places of Imprisonment by his Order No. 145 confirmed ”The Regulations Governing the Imprisonment of the Arrested and Convicted Persons”. It determines the arrangement of the solitary confinement cell: a window, ventilation, a lamp and the space shall not be smaller than 1,8 x 2,5 meters.

At the same time the Prosecutor General's Office expresses doubt about the compliance of Item 6 of the Provisions with the Satversme, as the above norm prohibits taking glasses, vitamins, writing paper, pen etc. to the cell.

The State Human Rights Bureau informs that it receives from the imprisoned persons very many complaints, among the other things also about the placement into the solitary confinement cell (punishment cell). Most often the complaints are about the administration, which, when applying punishment, does not take into consideration the explanations of the imprisoned persons, besides the applied punishment is often not proportionate to the particular violation.

The State Human Rights Bureau considers that the main problem lies in the fact that the imprisoned person, who has been placed into the punishment cell, has no possibility of appealing against the inflicted punishment. The real situation is like this –the imprisoned person may write a complaint only after serving the applied punishment and almost in all cases the Public Procurator's Office takes a decision that the infliction of the punishment has been well grounded.

The State Human Rights Bureau expresses the viewpoint that the prohibition of taking literature, including the religious literature into the solitary confinement cell is an unsuitable and disproportionate limitation. Besides, if a person is placed into the solitary confinement cell, he/she shall not be dispossessed of foodstuffs and food shall not be scarcer.

The State Human Rights Bureau points out that when visiting the places of confinement, attention is usually paid also to the punishment cells and their practical operation. It has been noticed that usually the maximum term for the placement into the punishment cell – 15 days – is used. If the person during this period commits another disciplinary violation, then the term is prolonged for 15 or even 30 days. As the imprisoned person is not allowed to walk, sleep during the day time, read literature, the cell is small and dark, the placement into the punishment cell might be considered as a cruel and degrading punishment.

The State Human Rights Bureau concludes that the practice of the imprisoned persons in Latvia does not comply with several international liabilities and thus also with Article 89 of the Satversme.

The concluding part

1. In conformity with Article 111 of the Satversme " the state shall protect human health and guarantee a basic level of medical assistance for everyone". The contents of this Article shall be interpreted when read together with Article 89 of the Satversme, which determines that the

state shall recognize and protect fundamental human rights in accordance with the Satversme, 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. Quite to the contrary – the objective of the legislator has been to achieve mutual harmony of the norms. In cases, when there is doubt about the contents of the human rights included in the Satversme, they should be interpreted in compliance with the practice of application of international norms of human rights" (*August 30, 2000 Constitutional Court Judgment in case No. 2002-03-01).* On May 4, 1990, when adopting the Declaration on the Accession of the Republic of Latvia to International Instruments Relating to Human Rights the Supreme Council declared that it considers as binding several international instruments in the sphere of human rights, also the UNO December 10, 1948 Universal Declaration on Human Rights and the UNO December 16, 1966 "International Covenant on Economic, Social and Cultural Rights". Article 25 of the UNO Universal Declaration on Human Rights determines that everyone has the right to an adequate standard of living for himself, including adequate food, clothing and housing, medical treatment and social services, needed for his health and welfare" . The first part of Article 12 of the above Covenant establishes that " the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". In compliance with the first part of the European Social Charter, the Contracting Parties accept as their aim of policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which rights and principles, among them also the right envisaging that "everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable" may be effectively realized. "Not doubting the close connection of implementation of the social rights with the feasibility of every state, the following human rights' conclusions shall still be taken into consideration – if some social rights are included in the fundamental law, the State cannot relinquish them. These rights do not have just a declarative nature" (March 13, 2001 the Republic of Latvia Constitutional Court Judgment). When interpreting the norms, incorporated into Article 111 as read together with the above international instruments and the practice of their application, (the Article determines that "the State shall protect human health and guarantee a basic level of medical assistance for everyone") from the Article follows that the obligation of the State is not only to undertake measures of protecting health of the people but also to abstain from activities, limiting the possibilities of persons taking care of their health themselves. Thus, in compliance with Article 111 of the Satversme, every person to a certain extent has the right of undertaking measures

he/she considers necessary to protect his/her health. The norm of Article 111 of the Satversme does not make the state responsible for ensuring the highest possible state of health, however, it charges it with the obligation to protect the right of every person to achieve and retain the state of health himself/herself (with an exception of certain cases) as well as with the obligation of refrain from activities, which do not allow the person to realize the right. It indirectly follows from the Constitutional Court Judgments in cases No. 2001-05-03 and 2001-15-03 that Article 111 of the Satversme incorporates the rights of the imprisoned persons to receive food of full value, at the same time envisaging the possibility to buy products at the prison shop and - under the present conditions- also to receive food parcels. By prohibiting the imprisoned persons to use the foodstuffs – either bought or received – as well as use the vitamins are restricted the fundamental rights of these persons to the protection of health, envisaged in Article 111 of the Satversme. Item 66 of the challenged act determines that ”personal things of the arrested person and foodstuffs shall be left in the storeroom and be returned after discharging the person from the punishment cell. If the foodstuffs get spoiled then an act is drawn up…”. The above Item is logically and inseparably connected with Item 64 of the challenged act, envisaging that ”when serving one's sentence in the punishment cell, the imprisoned person may take with him only the articles of personal hygiene and all notes and documents on the criminal case”. Even though the submitters have not included the above Item in their claim, the Constitutional Court – taking into consideration the inseparable connection of it with the challenged norms- has to also review the compliance of this Item with the legal norms of higher legal force. In Item 5 of the 1.st. Annex to the challenged act ”List of Articles, Things and Foodstuffs, which May be Held by the Imprisoned Persons” are enumerated items, which the passer of the act considers as articles of personal hygiene: soap, shampoo, tooth-brush, tooth paste, a plastic comb, soap-box, a pocket-size looking glass, shoe-polish, thread, an electric, mechanical or cassette-type shaving set, creme before and after shaving, hand and face cream, other cosmetics (without alcohol in it). In accordance with Item 6 glasses, contact lens, dentures and crutches and in conformity with Item 3 – also underwear shall not be considered as articles of personal hygiene. From Items 64 and 66 of the challenged act follows an unmistakable prohibition for the imprisoned persons, who are placed into the cell of the disciplinary punishment, not only to use the foodstuffs both – bought by themselves and received from their relatives, but also vitamins, glasses, contact lens and other things, which the persons consider as indispensable to ensure their health, as well as the prohibition to change underwear. Thus the above norms include limitations of fundamental rights incorporated into Article 111 of the Satversme. The Constitutional Court has to assess whether the limitations comply with the Satversme.

2. Article 116 of the Satversme determines that ”the rights of persons set out in Articles ninety-six, ninety-seven, ninety eight, one hundred, one hundred and two, one hundred and three, one hundred and six, and one hundred and eight of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs”. Article 116 of the Satversme does not mention the rights guaranteed in Article 111, however it does not mean that the fundamental rights are absolute and restrictions may not be imposed on them. The Satversme is a single whole and the norms enshrined into it shall be interpreted systemically. The presumption that no restrictions may be imposed on the rights of every particular person, envisaged in Article 111 of the Satversme, would be at variance with the fundamental rights guaranteed to other persons by Article 89 of the Satversme, namely, to protect fundamental human rights, Article 111 which envisages protection of human health and other norms of the Satversme. To protect other values guaranteed by the Satversme, inter alia fundamental rights of other persons and the democratic state system, restrictions may be imposed on the fundamental rights of a person, determined in Article 111 of the Satversme. However that does not mean that the any restrictions are admissible. The Satversme as a whole document demands that restrictions on fundamental rights shall be determined in a way, acceptable to a democratic state, i.e. – by the law or on the basis of the law. Besides, restrictions may be permissible only if they are necessary for reaching a certain objective, i.e.- they shall be proportional to the objective. The first part of Article 31of the European Social Charter envisages that ” the rights and principles set forth in Part I when effectively realized, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals”. Thus to assess whether the restrictions, incorporated into the challenged norms comply with Article 111 of the Satversme, it has to be established whether the restrictions are:

1) determined by the law or on the basis of the law;
2) justified with a legitimate objective;
3) proportional with this aim.

3. Article 94 of the Satversme determines that ”everyone has the right to liberty and security of persons. No one may be deprived of or have their liberty restricted, otherwise than in accordance with law”. The Satversme allows restriction of liberty in cases, envisaged by law, under

the procedure envisaged by law and with an objective, determined by law.

Liberty of the arrested persons is restricted on the basis of CPC, under the procedure, determined by CPC and with an objective, following from the relevant CPC norms, namely, to exclude the possibility that the accused or the defendant, when set free, might evade investigation and court, hinder the process of ascertaining truth in a criminal case, also endanger or influence the witnesses in the case, commit a criminal action as well as to ensure execution of the judgment.

Neither the Satversme nor the CPC specify the procedure of reaching this objective, namely, they do not determine where and how the arrested persons are to be placed and what particular restrictions are to be imposed. The fact, that a person is imprisoned, namely, that the fundamental rights, determined in Article 94 of the Satversme, in accordance with the law have been restricted, does not mean that all the other guaranteed by the Satversme rights have been restricted with regard to the person as well. It does not mean that the above person loses the fundamental rights or finds himself/herself in a specific status, allowing the executive power to restrict the fundamental rights as it chooses.

When supplementing the Satversme with Chapter VIII ”Fundamental Human Rights”, the legislator has determined the state system of values, which recognizes that the highest legal aim is the protection of the human esteem and liberty. From Article 89 of the Satversme, determining that ”the state shall recognize and protect fundamental human rights” it follows that fundamental human rights are binding to the state power in any of its forms.

Fundamental rights are immediate. Their restriction in any sector under the procedure, differing from the Satversme would be at variation with the principle. As the Constitutional Court has already concluded ” fundamental rights of the imprisoned persons may be restricted only by law or on the basis of the law” (*December 19, 2001 Judgment in case No. 2001-05-03).*

The challenged act has been passed on the basis of the Transitional Provisions. Transitional provisions in their turn were passed ”in connection with the Department of the Places of Confinement being subordinated to the Ministry of Justice”. Thus neither the challenged act, nor the restrictions envisaged in the Transitional Provisions have been established by the law or on the basis of the law.

As the Constitutional Court has concluded earlier ”the Transitional Provisions were passed on the basis of the first Part (Item 2) of Article 15 of the Cabinet of Ministers Structure, which determines that the minister experiences the right of passing regulations binding on subordinated institutions, if the relevant issue has not been regulated by the law or other Cabinet of Ministers Regulations. Order No. 1-1/187 envisages that the personnel of the Department of Detention Places and the institutions subordinated to it shall be acquainted with the Transitional Provisions. Neither the Transitional Provisions, nor the Regulations on the Internal Procedure, specifying them have been published for common knowledge. Thus the Transitional Provisions and the Regulations on the Internal Procedure are internal normative acts” (*December 19, 2001 judgment in case No.2001-05-03)* and cannot serve as the basis for imposing restrictions on fundamental rights.

However, one has to take into consideration that Chapter VIII of the Satversme is valid since November 6, 1998. The legislator, when adopting this Chapter has envisaged such a procedure for keeping the imprisoned persons, but there is no reference , stating that the above sector on the legislative level shall be aligned just immediately after Chapter VIII of the Satversme takes effect. The value system of the Satversme advances the assignment to the legislator to ensure establishment of the specific procedure in reasonable time.

When considering the issue on whether the time limit has been exceeded and whether one may perceive violation of fundamental rights permitted by the legislator, one should take into consideration the fact that at the moment of Chapter VIII of the Satversme taking effect in Latvia still existed the procedure inherited from the Soviet regime, when the places of confinement were subordinated to the Ministry of the Interior. A year after Chapter VIII of the Satversme took effect the legislator took a vitally important step – reorganized the system and from then on the places of confinement are subordinated to the Ministry of Justice. On June 30, 2002, the Saeima adopted the law ”Amendments to the Latvian Criminal Procedure Code”, which took effect on November 1, 2002. The law envisages that ” the detainees are held in the investigation prison or in the investigation section of another type of prison”. In its turn, ” the procedure of placement and distribution, regime, rights and obligations, health care and material guarantees, security measures as well as the procedure of discharging from the investigation prison or removal to another institution of deprivation of liberty are specified by the Cabinet of Ministers”.

As it follows from the Information of the Deputy State Secretary of the Ministry of Justice , a specific law on the procedure of holding persons

imprisoned, which is being elaborated by the Ministry of Justice might take force at the same time as the Criminal Procedure Law.

Thus, a consequent advance towards determining the procedure of holding persons in prison in reasonable time and in compliance with the requirements of the Satversme can be noticed.

The Constitutional Courts of other States in several cases have also conceded that " restrictions of the fundamental rights of the imprisoned persons, not substantiated by the law, shall be permitted for a transitional period so that the legislator has the possibility to pass the law on the execution of punishment, which strictly determines the restrictions and complies with the contemporary understanding of fundamental rights. However, the period shall be limited" (*March 14, 1972 Judgment in case No. 2BvR 41/71 /BVerfGE 33, 1/ of the 2.nd Senate of the German Federal Constitutional Court).*

One has to take into consideration that both - the Transitional Provisions and the challenged act are directed towards determination of order in investigation prisons and include issues on the protection of the fundamental rights of the persons, held in places of deprivation of liberty, as well as the protection of the fundamental rights and security of the personnel. If no act would regulate the above sphere, then the situation will even less comply with the Satversme.

Even though *ultra vires* has been passed it would be permissible to leave the challenged act valid to the moment of the particular norms of CPC Article 76 and the Cabinet of Ministers Regulations envisaged in the Article taking effect. However the period shall not be longer than up to May 1, 2003. If the challenged norms are in effect after that date, then they will be at variance with Article 64 of the Satversme, which determines that the Saeima, and also the people, have the right to legislate, in accordance with the procedures and to the extent, provided for by the Constitution.

However it does not mean that violation of any fundamental right of the arrested person is permissible. Every particular norm shall be examined to see whether it violates the rights of the imprisoned person in the admissible way.

4. "Presumption of innocence, which follows from Article 6 (the second part) of the European Convention for the Protection of Human Rights and Fundamental Freedoms shall be applied to all persons who are in pre-trial detention place. Therefore the above persons cannot be subjected to any execution of punishment" (*Münchalffen G., Gatzweiler*

N. das recht der Untersuchungshaft, 2.Auflage, München, verlag C.H.Beck, 2002,S.192).

The second sentence of the Satversme Article 92 also determines the presumption of innocence, therefore every restriction, inflicted on the arrested but not convicted person shall be commensurate with this principle. Only the restrictions, which are necessary for performing criminal procedural activities or for maintaining order and security at the place of detention, shall be permitted as regards persons, who are to be presumed innocent to the moment of proving he/she is guilty.

Preclusion of the circumstances mentioned in CPC Article 68, namely, not to allow the accused or the person to be tried avoid investigation and court or impede, or influence the witnesses, or commit a crime as well as with an objective to execute the judgment shall be regarded as a legitimate objective, permitting limitation of the fundamental rights of the imprisoned persons. In this case the democratic state system and the rights of other persons are protected. In the same way, maintaining of appropriate order in the place of confinement if it is directed towards the protection of rights of the personnel and other imprisoned persons shall also be considered as a legitimate aim.

In the same way, when envisaging disciplinary punishment, the means, used to guarantee the relevant restrictions, may also be considered as a legitimate objective. However, the aim of the disciplinary punishment shall be considered as legitimate only if it is applied for violating those restrictions, which comply with the system of values of the Satversme and serve the objectives of limitation of liberty in the investigation prisons.

Restrictions of fundamental rights, incorporated into Article 111 of the Satversme envisaged in Items 64 and 66 of the challenged act, which *inter alia* prohibit taking to the punishment cell and thus – to use vitamins, glasses, contact lens as well as does not provide for changing underwear, even though they have been determined with a legitimate aim, are not proportional to it and are not necessary in a democratic society.

Thus Items 64 and 66 of the challenged act are unconformable with Article 111 of the Satversme.

5. The submitters hold that the challenged norms contradict Article 95 of the Satversme, which determines that "the State shall protect human honour and dignity. Torture or other cruel or degrading treatment of human beings is prohibited. No one shall be subjected to inhuman or degrading punishment".

UNO Convention against torture and other cruel, inhuman or degrading treatment or punishment, which in Latvia is in effect since May 14, 1992, envisages that ”every member state shall undertake effective legislative, administrative, court and other measures to eliminate acts of torture in any territory subordinated to its jurisdiction”. In this Convention torture means ”any action, which causes strong physical or moral pain and suffering to a person with an intent to get from it or from the third person some information or confession, punish it for the deed or conduct, accomplished by it or the third person as well as to intimidate the person or make it (or the third person) do something or because of any other reason, based on discrimination of other kind as well as in cases when the pain or suffering is caused by a state official or other official persons or the above suffering is caused with the consent of the official person or on the basis of abetment. The term does not denote pain or suffering, which is caused only as the result of legal sanctions or when the above sanctions cause them accidentally.”

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also determines that ”no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Contents and limits of Article 95 of the Satversme shall be elucidated by taking into consideration the above international instruments and the practice of their application.

The European Court of Human Rights has repeatedly mentioned that Article 3 of the Convention incorporates one of the fundamental values of a democratic society. It prohibits torturing or degrading treatment regardless of circumstances and the behavior of the victim (*see case Labita v. Italy, 06.04.2000).*

The Court reminds that the level of bad behavior has to be gravely felt to make reference to Article 3 of the Convention. Evaluation of the gravity of the situation usually is rather relative; it depends on all the circumstances, like, duration of bad behavior, its physical and mental effect and in some cases also on the gender, age and health of the victim. Besides, when making a decision on whether the behavior can be considered as degrading in the meaning of Article 3 of the Convention, the Court has to bear in mind whether the aim of the above behavior has been to degrade the person and whether the consequences of it have influenced the particular person in a way, which cannot be harmonized with Article 3. But even the lack of the above reason does not exclude the possibility that the norms, incorporated into Article 3 might be violated (see the case *Pears v. Greece, 19.04.2001).*

Deprivation of Liberty to a person in itself includes elements of humiliation. However the state shall ensure such conditions in the places of imprisonment, which do not degrade the human dignity and do not subject the person to such hardships and suffering, which exceed the permissible level as well as guarantee that the regime of the prison will allow maintaining health and - conformable with the conditions – welfare (see case *Kudla v. Poland, 26.10.2000).*

The European Court of Human Rights in the case ”Valasinas v. Lithuania” (*Valasinas v. Lithuania, 24.07.2001)* among other things assessed whether placement of a person into a solitary confinement cell (punishment cell) complies with the requirement of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The applicant stated that he has been placed into the solitary confinement cell of approximately 6 m^2, where he and one another person were confined. In the cell there was a washbasin and an Asian type toilet and a table in the middle of the room. When the delegates of the European Court of Human Rights attended the prison and the solitary confinement cell in it, it was established that the cell was ”a narrow room in which two people could be detained. During the day the beds are locked up against the wall like a couchette in a train. The cell had low benches and a cupboard. It also had a separate closed toilet and washbasin”. After examining the report of the delegates on the conditions in the solitary confinement cell, the European Court of Human Rights held that the there had been no violation of Article 3 of the Convention as regards the applicant’s complaints about the conditions of the detention in the solitary confinement cell.

It follows from the application that the submitters question the compliance of the disciplinary punishment –”placement into a punishment cell” with the requirements of the Satversme and the above international instruments.

Placement into a solitary confinement cell (the punishment cell) is envisaged also in laws of democratic states and has been recognized as permissible both in the practice of the European Court of Human Rights and that of the Constitutional Courts of many states.

Violation of the fundamental rights is not detected in the type of the punishment – ”placement into the solitary confinement cell (the punishment cell)” but in the conditions under which the imprisoned person is detained in the cell as well as in the fact whether the inflicted punishment was well grounded.

It follows from the letter of the Minister of Justice that the Transitional Provisions envisage placement of the person into a solitary confinement cell, which is a naturally lighted room, which shall not be smaller than 1,8 x 2,5 meters. Besides the punished person is partly forbidden to meet other persons, buy foodstuffs, send letters and use table games, as well as take with him/her personal things and foodstuffs, with an exception of things for personal hygiene and all notes and documents in the case.

Thus, the placement into the punishment cell does not envisage a cruel or degrading penalty or such a treatment, which could be considered as the violation of Article 95 of the Satversme.

In cases, when the persons are placed into the punishment cell, which do not meet the above requirements, the persons (officials), applying the disciplinary punishment, violate the norms of the Transitional Provisions and other legal norms. In compliance with the Law "On the Public Procurator's Office", evaluation of such cases is within the competence of the Republic of Latvia Public Procurator's Office. In the same way the Republic of Latvia Public Procurator's Office shall assess whether the activity of a particular official has not violated the requirements of Article 95 of the Satversme and other legal norms.

As within the competence of the Constitutional Court are only issues on the conformity of the norms, incorporated into the relevant normative act, the Constitutional Court abstains from expressing the viewpoint on whether the particular activities against the submitters shall be assessed as the violation of Article 95 of the Satversme.

6. The submitters in their applications have included the claim on the conformity of the challenged norms only with Articles 89, 95 and 111. However, when motivating why placement into a solitary confinement cell (the punishment cell) shall be regarded as cruel, inhuman and degrading and may be qualified as torture, the submitters have pointed to other restrictions of fundamental rights guaranteed in several other Articles of Chapter VIII of the Satversme.

The concept "fair court", mentioned in Article 92 of the Satversme, shall be understood also as an adequate process of reviewing a case in a law-based state. It requires *inter alia* to ensure the right of the accused person to have enough time and means to prepare his/her defense. Even though the challenged norms allow to take all the material in a criminal case to the punishment cell, the prohibition to bring paper and stationary into it restricts this right.

Article 104 of the Satversme guarantees the right of everyone to address submissions to state or local government institutions and to receive a

materially responsive reply. The prohibition to take paper, envelopes and stationary to the punishment cell, which follows from Items 64 and 66 of the challenged act, makes realization of the above right impossible and thus limits the right.

The first sentence of Article 100 of the Satversme guarantees that everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and express their views. The prohibition to take newspapers, books, magazines, letters, small TV sets and radios to the punishment cell (it is allowed to have them in a ward) is another limitation of the right.

Article 99 of the Satversme guarantees that everyone has the right to freedom of thought, conscience and religion. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms envisages analogous rights. Even though both – the European Commission of Human Rights and the European Court of Human Rights allow the state itself to take a decision on restrictions for the imprisoned persons in this sphere, however the restrictions first of all have to be duly determined.

Article 116 of the Satversme establishes that the rights of persons, set out in Article 100 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs.

As has already been concluded, the restrictions, incorporated into the challenged norms were not determined by law or on the basis of the law. Thus their compliance with the requirements of the above Articles of the Satversme is questionable.

7. Item 59.1.6. of the challenged acts establishes that only the chief (warden) of the prison may inflict the disciplinary punishment-placement into the punishment cell. This provision is used not only in Latvia but also in several other European states. The warden of the prison is a high and responsible official and may take the decision on the above disciplinary punishment.

Item 59.1.6. of the challenged act is inseparably connected with Item 62 and Annex 6 to it. As a matter of fact the submitters challenge just these norms, as the procedure of taking the decision on the disciplinary punishment is not regulated so as to meet the requirements of a democratic and law-based state.

On May 4, 1990, when adopting the Declaration on the Accession of the Republic of Latvia to International Legal Instruments Relating to Human Rights, declared as binding also the ”Minimum Standard Provisions on Treatment of Imprisoned Persons” (*adopted in 1955 in Geneva at the first UNO Congress on the Preclusion of Crime and Treatment of Law Breakers; backed by July 31, 1957 Resolution 663 C /XXIV/ of the UNO Economic and Social Board and May 13, 1977 Resolution 2076 /LXII/).* Fundamental principle 30 (Item 2) of the Section ”Discipline and Punishment” of the above Minimum Standard Provisions envisages that ”no imprisoned person may be subjected to punishment before he/she has been informed about the offence he/she has committed, and before he/she has experienced the right of being heard out. Competent institutions shall carefully review every single case”.

Fundamental principle 31 (Item 1) of the above Minimum standard Provisions establishes that ”punishment, anticipating special treatment or decreasing of food, may be inflicted only after a doctor has examined the imprisoned person and in a written form attested that the imprisoned person may serve the sentence”.

Provision No. 31 of the Regulations on European Places of Detention (*Recommendation No. R /87/ 3; adopted by the Committee of Ministers of the European Council on February 12, 1987)* inter alia envisages that an appellation process, the institution responsible for it and the possibilities of using it shall be established also with regard to disciplinary punishment.

Ungrounded is the viewpoint, which follows from the applications that the challenged act is unconformable with Article 89 of the Satversme just because the norms, regulating the requirements of the European Places of detention. However, even though both the above acts are just recommendation, the norms, incorporated into it shall be used when interpreting the contents and limits of the rights, guaranteed by the Satversme.

Article 89 of the Satversme shall be interpreted systemically and be read together with other Satversme Articles. Among other things it obliges the state institutions to use all the necessary measures to ensure the protection of the fundamental rights, guaranteed by the Satversme and implementation of those international norms on the human rights, which Latvia has recognized as binding. However, this Article does not impose the duty, guaranteeing implementation of such international norms, which are not binding on Latvia, if they are not incorporated into the fundamental rights guaranteed by the Satversme.

Article 89 of the Satversme establishes that ”the State recognizes and protects” fundamental human rights. When reading this Article together with the principle of a law-based state, rule of law and the principle of proportionality, which follows from Article 1 of the Satversme, it is evident 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. 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. Besides, the procedure shall envisage the possibility of appealing against the punishment as well.

The challenged act does not ensure realization of the above provisions. Annex 6 to the act lacks the column in which the explanations of the punished person could be written in and there is no reference to the possibility of appealing against the decision to the procurator.

First of all it is at variance with the first part of Article 15 of the Public Procurator’s Office Law. Among other things it envisages that in accordance with procedures set by law the public procurator shall supervise ”places where the arrested, detained or guarded persons are held”. From February 21, 2002 letter of the Deputy Head Procurator of the Specialized Procurator’s Office of several sectors A.Ģēģeris follows, that the issue on the possibility of writing complaints for the persons, who are placed in the punishment cells ”has been solved with the January 3, 2002 explanatory letter by the Chief of the Department of Places of Confinement to all the wardens of the prisons”. However, the challenged act does not anticipate the possibility of appealing against the violation of rights. Besides, Items 64 and 66 of the act deny the possibility of writing complaints.

Thus Items 64 and 66 of the act as well as Annex 6 to it are unconformable with the Satversme.

The Constitutional Court draws attention to the fact that the requirement of above Annex to enter patronymics together with the first name and the surname in the first column, does not comply with the norms of the Latvian literary language. Thus the conformity of this column with the requirements of Article 8 (the first part) and Article 23 (the first part) of the State Language Law is questionable. The Articles determine that ” in state and local government institutions… the state language must be used in recordkeeping and documents” and ” within official

communications the Latvian language must be used, observing the norms of literary language in force".

8. The Transitional Provisions authorize the Department of the Places of Confinement to determine, which persons experience the right of inflicting disciplinary punishment. However the Provisions do not authorize the Department to establish additional cases when the punishment – placement into the punishment cell shall be applied.

The Transitional Provisions anticipate that only those persons, who have repeatedly and grossly violated the Rules of order (regime) of penitentiaries, may be placed into the punishment cell. The norms of the Transitional Provisions refer to all kinds of violation of the investigation prison regime – also for violation of the punishment cell regime. The Minister of Justice points out that placement into the punishment cell is the final measure against the persons who maliciously violate the Rules of order of penitentiaries and when all the other means of punishment have not given a positive result.

Item 68 of the challenged act in its turn determines that " all the envisaged kinds of punishment, including the placement into the punishment cell, may be applied to the imprisoned person, who has violated the regime of the punishment cell". It follows from this Item that for any violation of the regime determined for the punishment cell, any kind of the envisaged disciplinary punishment may be applied. That is at variance with the Transitional Provisions, which thoroughly enumerate the cases in which disciplinary punishment, including the most serious - placement into the punishment cell, shall be applied.

Thus, the challenged norm anticipates applying of the disciplinary punishment, which is connected with restriction of the fundamental rights to such an extent, which is not necessary to reach the legitimate objective. Therefore the norm is at variance with Article 89 of the Satversme, which establishes that "the State shall recognize and protect fundamental human rights".

The substantive part

On the basis of Articles 30 – 32 of the Constitutional Court Law,

the Constitutional Court

decided:

1. To declare Items 64 and 66 of the ”Rules on the Internal Order of Investigatory Prisons ”, confirmed by the Department of the Places of Confinement May 9, 2001 Order No. 63 as **unconformable with** Article 64, 89 and 111 of the Satversme and null and void as of the day of publishing the Judgment.
2. To declare Item 68 of and Annex 6 to the ”Rules on the Internal Order of Investigatory Prisons”, confirmed by the Department of the Places of Confinement May 9, 2001 Order No. 63 as **unconformable with** Articles 64 and 89 of the Satversme and null and void as of the day of publishing the Judgment.
3. To declare the other part of the ”Rules on the Internal Order ofInvestigatory Prisons””, confirmed by the Department of the Places of Confinement May 9, 2001 Order No. 63 as **unconformable with** Article 64 of the Republic of Latvia Satversme and null and void from May 1, 2003.

The Judgment in final and allowing of no appeal.

The Chairman of the Constitutional Court session A. Endziņš