THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

Riga, April 23, 2009

in Case No. 2008-42-01

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

based on the constitutional claim of Jevgeņijs Cecervovs,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia, Article 16 (1), Article 17 (1) (11) and Article 19.^{2} and 28.^{1} of the Constitutional Court Law,

on 27 March 2009, in Court sitting examined the case

"On Compliance of the Words "One Hour Long" and "at Presence of a Representative of an Investigation Prison Administration" of Item 6 of Section 13 of the Law "On Procedures for Keeping in Custody" with Article 96 of the Satversme (Constitution) of the Republic of Latvia".

The Constitutional Court has established:

1. The Law "On Procedures for Keeping in Custody" was adopted on 22 June 2006 and came into force on 18 July 2006. This Law provides for the procedure of placing detained persons in an investigation prison, as well as the

rights and duties of the detained persons, providing assistance for the detained persons, security, social rehabilitation, mental assistance, breeding, employment and measures to ensure the regime of an investigation prison. Section 13 of the Law “On Procedures for Keeping in Custody” provides for the rights of prisoners. Item 6 of the first part of this Section establishes that a detained person shall have the right to one hour long visit with relatives or other persons not more often than once per month and at presence of a representative of prison administration. On the other hand, the second part of Section 13 provides that an investigating judge or a court may restrict the rights established in Item 6 of the first part of this Article.

The question regarding restriction of the rights of a detained person is also regulated by Article 271 of the Criminal Procedure Law.

2. The person who submitted the constitutional claim Jevgeņijs Cecervovs (hereinafter – the Applicant) holds that the words “one hour long” and “at presence of a representative of an investigation prison administration” of Item 6 of Section 13 of the Law "On Provisions for Keeping in Custody" (hereinafter - the Contested Norm) does not comply with Article 95 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

It has been indicated in the constitutional claim that the Contested Norm restricts the rights of a person to private life and family life. These rights can be restricted if the restriction is established by law, it has a legitimate objective and it is indispensible in a democratic society. The Applicant admits that the restriction has been established by law. Since the objective of the abovementioned norm is to prevent more criminal offences committed by the detained persons, prevent them escaping a prison or adjusting evidence, then it has a legitimate objective, namely, protection of public safety. It has also been indicated in the application that the legal remedy provided for in the Contested Norm is appropriate for reaching the legitimate objective. This remedy, however, is not the one that would restrict the rights of a person at the least degree possible. The second part of Section 13 of the Law “On Procedures for

Keeping in Custody" and Section 271 of the Criminal Procedure Law permits a court or an investigating judge, when assessing each particular situation and individuality of a defendant, to provide for individual restrictions to the rights to meet relatives or other persons. The area of regulation included in these norms is sufficient to reach the legitimate objective and not to allow such adjustment of evidence and contact with criminal environment. The Applicant indicates that not all persons that a defendant could meet are witnesses or would help him or her to escape the prison. Consequently, meeting with such persons can not infringe investigation procedure. The Applicant emphasizes that each situation should be assessed individually and "it is not right to guide oneself by maximum standards". Moreover, the restriction is substantial and non-compliant with the objectives in the cases when investigation is finished, especially after delivering of the judgment of the first instance court.

It is also mentioned in the constitutional claim that Section 24.4 of the Recommendation Rec (2006) 2 of the Committee of Ministers of the Council of Europe to the Member States on the European Prison Rules (hereinafter – European Prison Rules) provides: the arrangements to visits shall be such as to allow prisoners to maintain and develop family relationships in as normal manner as possible. It follows from the Commentaries to the European Prison Rules that this visit could last for 72 hours. By referring to the case-law of the European Court of Human Rights, the Applicant indicates that in separate cases prohibition of long visits could be justified; however, it does not mean that it should be applied "automatically" to all prisoners.

It has been indicated in the application that the Contested Norm is being applied also in the cases when a person has confessed and an appeal or a cassation claim has been submitted by a co-defendant, not by the defendant. In such a situation, there is no reason to maintain that a defendant who has pleaded guilty would infringe the interests of investigation. Likewise, the Applicant indicates that in his case the co-defendant is also placed in prison, whilst his mother, wife and daughter are neither witnesses nor defendants. The court has applied imprisonment because it considered that the defendant, being

in freedom, could commit another criminal offence. There is no reason to suppose, however, that a long visit with the mother, the wife and the daughter could cause a risk of another criminal offence.

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

The Saeima indicates that separation from the family and stress caused by such situation for detained persons, like for prisoners of places of deprivation of liberty, is an integral characteristic feature of deprivation of liberty. Consequently, the restrictions to meet one's relatives and friends are reasonable and cannot be assessed as intervention into the private life of the detained persons and prisoners. It follows from the essence of imprisonment that the life of respective persons is being restricted, namely, the rights of the detained persons to family life (including the rights to meet with family members) are not the same as those of persons in freedom.

The objective of the Contested Norm is to prevent unlawful involvement of a suspect or a defendant into a criminal procedure by thus ensuring impartial investigation of a case and objective decision-making process when putting the culprit to trial. Consequently, the Contested Norm has a legitimate objective, i.e. to protect the constitutional value established in Article 116 of the Satversme, namely, public safety.

The Saeima indicates that custody is the most severe punishment of all security measures and, unlike deprivation of liberty, is a short-term measure. The objective of a long visit is to help a defendant to preserve relationships with immediate family while being separated due to serving of a sentence. In the case of imprisonment, there is no need to meet relatives due to the short-term character of custody.

Moreover, the difference between the detained persons and prisoners regarding the issue of the rights to long visits is grounded because, in the case of a convict, a fair regulation of criminal law and public safety is already

established, and it is not infringed by the fact that a convicts meets a wider circle of persons for a longer period of time. On the other hand, as to imprisoned persons, no adjudication of the court in a criminal case is yet effective. Therefore, it is necessary to restrict contacting of the detained persons with family members and other persons for investigation purposes. This also applies to persons who have been imprisoned in accordance with a decision of the first instance or an appellate instance court. Under the Criminal Procedure Law, these decisions can be appealed, which means that, before coming into force of the judgment, the criminal procedure in the respective case has not yet been completed and there is a possibility that the convict could influence the judgment during these procedural stages.

The Saeima indicates that, by providing a detained person with the rights to meet other person at presence of a representative of administration of the place of imprisonment, this would cause risk that during the visit the detained person could divulge out investigation secret or any other information (including affecting of witnesses) to a party that is not involved in a criminal procedure by thus infringing adjudication of the case in accordance with a fair regulation of relations established by law through criminal law.

Moreover, when ensuring long visits, it is not enough to change the regulation regarding the length of visit and ensure presence of a representative of prison administration. In order to ensure long visits, specially equipped premises and conditions are needed that, on the one hand, would guarantee the regime of the prison and, on the other one, would cause no inconvenience to prisoners and the members of his or her family. Consequently, to ensure long visits, this would require transforming of a place of custody, as well as certain time and financial resources. By referring to the judgment of the European Court of Human Rights in the case *Dickson v. United Kingdom*, the Saeima emphasizes that the international liabilities of Latvia obligates the state to provide the detained persons with long visits with their family members. In the abovementioned case, the European Court of Human Rights has indicated that the European Convention for Protection of Human Rights and Fundamental

Freedoms (hereinafter – the Convention) does not deny the rights even to a convict to have long visits.

When commenting what has been established in the Commentaries to the European Prison Rules, the Saeima explains that Section 24.2 of the European Prison Rules provides for a possibility to restrict the rights of the detained persons to a private life in order to secure the interests of the criminal procedure. Moreover, it has been established in the Commentaries to the European Prison Rules that the prisoner should be authorized to have long visits whenever circumstances allow. In Latvia, this requirement has been implemented, namely, prisoners are guaranteed the rights to a long visit.

The Saeima concludes that, taking into account the aim of application of imprisonment, the restrictions enshrined in the Contested Norm are proportionate because this is the only possibility to prevent any threat to impartial investigation and fair adjudication of a criminal case.

4. The Ministry of Justice as an invited party holds that the Contested Norm complies with Article 96 of the Satversme. The argumentation provided by the Ministry of Justice and justifying such opinion coincides with those of the Saeima.

The Ministry of Justice also emphasizes that, according to Section 272 of the Criminal Procedure Law, detention may be applied only if there are substantial concerns that a person will commit another criminal offence, hinder an investigation and circumstances provided for by law present. An investigating judge in a pre-trial period or a court during the proceedings, before adoption of the final decision regarding application of detention, shall hear out the opinion of the detained person, assess suggestions of the investigator or state prosecutor, take into consideration the character of the criminal offence and the reason for imprisonment. Consequently, a court or an investigating judge shall assess, before applying imprisonment, whether application of imprisonment is necessary due to objective considerations and whether it is useful, as well as whether detention shall be applied only in the

cases when a person could hinder criminal procedure or commit another criminal offence.

The Ministry of Justice indicates that those persons who have been applied detention by the first instance court or an appellate instance court are also allowed to have long visits. A court, when applying detention at the stage of proceedings, takes into consideration the same factors that are considered by an investigating judge at a pre-trial stage. Application of detention is not obligatory in the cases when a court has applied detention to a person. Detention is applied only in the case if a person may threat criminal procedure or commit another criminal offence or if a person has committed an especially serious crime and circumstances provided for by law are present. Moreover, under Item 5 of the first part of Section 551 and the second part of Section 560 of the Criminal Procedure Law, new evidence can be lodged in a appellate instance court, as well as one can require interrogation of persons who have not been interrogated at the first instance court. Consequently, it is possible that the defendant may affect the criminal procedure up to the moment when the case is transferred to examination thereof in an appellate instance court if the first instance court has passed a verdict of guilty.

The Ministry of Justice also indicates that the convicts, except for those placed in open prisons where no restrictions are established, have the right to have three to eight long visits per year, namely, they are provided the possibility to have one visits within the time period of a month and a half up to that of one month. Therefore it is fair and proportionate to deny rights to the detained persons to a long visit taking into consideration the period of imprisonment, which cannot exceed, respectively, 3, 9, 12 and 24 months. The Ministry of Justice notifies that in Latvia, like in Estonia, only prisoners of places of deprivation of liberty, and not detained persons have the right to a long family visit.

5. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) as an invited person holds that the Contested Norm provides for

non-proportionate restrictions of the rights guaranteed in Article 96 of the Satversme. The Ombudsman emphasizes in particular that it would be necessary to assess each situation individually because this is not always right to suppose that visiting of a detained person with relatives could constitute threat to the investigation process. As it can be seen in the practice, a person may be applied detention even for three years. The Ombudsman draws attention to the case when a person spent more than 30 months under arrest, and he was not provided the possibility to meet his spouse alone.

6. The Latvian Prison Administration provides information on the imprisoned persons. Out of 1892 persons imprisoned before 1 January 2009, 451 persons were applied detention before trial, 478 persons were prisoners whose criminal case investigation has been finished and the case has been lodged to the first instance court, 548 persons were waiting for examination of a judgment according to appellate procedure, 47 persons were waiting for examination of a judgment according to cassation procedure, 246 persons were waiting for coming of a judgment into effect and 122 persons were detained persons of other categories.

The Latvian Prison Administration also indicates that all places of detention are equipped with premises for long visits, except for Olaine Prison and Vecumnieki Prison. Likewise the Administration provides information on the number of such places in each prison. About 50 percent of the convicts use these premises, and almost all the time the premises are occupied. It is, in fact, impossible to create additional premises for long visits because of lack of funding.

At present, none of the normative acts provides how premises for short visits should be equipped. Consequently, equipping of premises for visiting in different places of imprisonment may differ. In all places of imprisonment, however, except for Cēsis correctional facility for minors, the premise for short visits is divided into two parts by means of multiplexer glass wall. One half of the room is meant for the inmates, the other one - for visitors. Both part of the

premise have cabins with a telephone set, by means of which a prisoner can talk to the visitor. In each prison premise for meetings, there are four to eight cabins. The representative of the administration of the place of imprisonment supervises the visits from another room that is also separated by means of a multiplexer glass wall. From this room, one can see both, prisoners and visitors. Moreover, the room of the representative of prison administration is equipped with a device that permits auditing the conversation in each cabin without interrupting the visit.

The Constitutional Court holds:

7. The Constitutional Court concludes that a technical flaw has occurred in the decision on initiation of a case. Namely, in the title of the case, the part of Section 13 of the Law "On Procedures for Keeping in Custody", wherein Item 6 is included, has not been indicated, and neither the kind of prison has been specified.

Consequently, the title should have the following wording: "On Compliance of the Words "One Hour Long" and "at Presence of a Representative of an Investigation Prison Administration" of Item 6 of the first part of Section 13 of the Law "On Procedures for Keeping in Custody" with Article 96 of the Satversme (Constitution) of the Republic of Latvia".

8. Article 96 of the Satversme provides: "Everyone has the right to inviolability of his or her private life, home and correspondence."

The Applicant has indicated in the constitutional claim that the Contested Norm restricts the rights to private life and family life established in this Article in a non-proportionate manner. Article 96 of the Satversme *expressis verbis* provides only for the rights to inviolability of private life.

On the other hand, Article 110 of the Satversme provides that the State shall protect and support marriage, the family, the rights of parents and the rights of the child. Consequently, Article 110 of the Satversme guarantees the rights to inviolability of family life.

This does not mean, however, that these rights have not been included in Article 96 of the Satversme. For instance, the freedom of trade unions is established in Article 108 of the Satversme, whilst it also follows from the right to form and join associations established in Article 102 of the Satversme. Likewise, the right to inviolability of private right included in Article 96 of the Satversme includes also protection of dignity and honour (*see: Judgment of 26 January 2005 by the Constitutional Court in the case No. 2004–17–01, Para 10*), however the duty of the State to protect dignity and honour is also established in the first sentence of Article 95 of the Satversme. Consequently, one and the same rights can be protected by several articles of the Satversme.

It is necessary to take into consideration, that the notion "private life" is often used in a broader sense by including therein the rights to respect for family life, home and correspondence. Secondly, it has been recognized in the law that the rights laid down cannot be clearly distinguished from each other. They supplement each other and overlap (*see: Dijk P., Hoof G.J.H. Theory and Practice of the European Convention on Human Rights. Hague, London, Boston: Kluwer Law International, 1998, p.489; Kilkelly U. The right to respect for private and family life. A guide to the implementation of Article 8 of the European Convention on Human Rights. Council of Europe, 2001, p.10 – 11; Reid K. A Practitioner's Guide to the European Convention on Human Rights. London: Sweet&Maxwell, 2008, p.481).*

Consequently, the rights to inviolability of private life guaranteed in Article 96 of the Satversme include also the rights to inviolability of family life.

9. When explaining the rights to private life guaranteed in Article 96 of the Satversme, the Constitutional Court has already stated that these rights include different aspects. It protects the physical and moral integrity, honour and reputation, use of person's name and identity, personal data of a person and concerns other aspects, connected with private life. The right to private life means that the individual has the right to its private home, the right to live as he

likes, in accordance with his nature and wish to develop and improve the personality, tolerating minimum interference of the state or other persons. The right includes the right of an individual to be different, retain and develop virtues and abilities, which distinguish him from other persons and individualizes him (*see: Judgment of 26 January 2005 by the Constitutional Court in the case No. 2004–17–01, Para 10*).

10. When establishing the content of the basic rights provided for in the Satversme, it is necessary to take into account the international liabilities of Latvia in the field of human rights. International norms of human rights and the practice of their application serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights included in the Satversme. The duty of the State is to take into consideration the international liabilities in the field of human rights that follow from Article 89 of the Satversme, which provides that the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia. From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the Satversme to the international ones (*see: Judgment of 9 May 2008 by the Constitutional Court in the case No. 2007-24-01, Para 11*).

The rights to inviolability of private and family life are guaranteed in Article 8 of the Convention. The European Court of Human Rights has established that respect for private life must also comprise to a certain degree the right to establish and develop relations with other human beings (*see: Judgment of the European Court of Human Rights in the cases: Niemietz v. Germany, judgment of 16 December 1992, Series A no. 251-B, para 29; Perry v. the United Kingdom, judgment of 17 July 2003, Reports of Judgments and Decisions 2003-IX, para 36; Biriuk v. Lithuania, judgment of 25 November 2008, application nr. 23373/03, para 34).* On the other hand, the right to family

life means the right to maintain relations with family members. The European Court of Human Rights has reiterated that a substantial element of family life is the possibility of children and their parents to maintain regular contacts with each other (*see: Judgment of the European Court of Human Rights in the cases: Olsson v. Sweden (no. 1), judgment of 24 March 1988, Series A no. 130, para 59; Berrehab v. the Netherlands, judgment of 21 June 1988, Series A no. 138, para 23; X v. Croatia, judgment of 17 July 2008, application no. 11223/04, para 3]*. Furthermore, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life (*see: Judgment of the European Court of Human Rights in the cases: Guerra and others v. Italy, judgment of 19 February 1998, Reports 1998-I, para 58; Von Hannover v. Germany, judgment of 24 June 2004, Reports of Judgments and Decisions 2004-VI, para 57; Biriuk v. Lithuania, judgment of 25 November 2008, application no. 23373/03, para 35).*

The duty of the State to help a person to maintain relations with close persons during custody follows from the rights to private and family life (*see: Judgment of the European Court of Human Rights in the cases: Aliev v. Ukraine, judgment of 29 April 2003, application no. 41220/98, para 187; Moiseyev v. Russia, judgment of 9 October 2008, application no. 62936/00, para 246 and Reports of the European Committee for the Prevention of Torture: Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 January to 3 February 1999, para 178. http://www.cpt.coe.int/documents/lva/2001-27-inf-eng.htm; Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 26 May 2006, para 92.*

http://www.cpt.coe.int/documents/mkd/2008-05-inf-eng.htm]. Since the possibilities of a person, due to custody, to maintain contacts and relations with other persons are restricted and thus an imprisoned person may get alienated from his or her family members, the State should prevent these negative consequences of the place of imprisonment as much as possible. Moreover, it is necessary to take into consideration the fact that the guilt of the detained person might have not yet been established.

Consequently, these persons can be subjected to such restrictions of the basic rights that are absolutely necessary in order to ensure reaching of the objective of imprisonment and guarantee security in the place of imprisonment.

Consequently, it can be concluded that the right to private life guaranteed in Article 96 of the Satversme comprise the rights to form and maintain relations with family members and other human beings. Moreover, not only the duty of the State to refrain from intervention into private life, but also the duty of the State to carry out necessary activities to secure these rights follows from the abovementioned right.

11. In order to establish whether the Contested Norm complies with Article 96 of the Satversme, first of all it is necessary to assess whether it restricts the rights guaranteed in this Article.

11.1. The Contested Norm provides that a visit of a detained person with his relatives and other person may be only one hour long and it would take place at presence of a representative of prison administration. Consequently, this norm regulates the rights of persons to meet with other persons who are deprived of liberty.

11.2. The Saeima and the Ministry of Justice indicates that separation of imprisoned persons from their family and the stress caused by this situation is integral characteristic feature of deprivation of liberty. It follows from the essence of imprisonment that the life of respective persons is being restricted, namely, the rights of the detained persons to family life (including the rights to meet with family members) are not the same as those of persons in freedom.

The European Court of Human Rights has recognized that, when establishing maximum number and the length of visits, as well as providing for supervision of the visits, the right of a person to private and family life are being restricted (*see, e.g., Judgments of the European Court of Human Rights in the cases: Moiseyev v. Russia, judgment of 9 October 2008, application no. 62936/00, para 246; Ciorap v. Moldova, judgment of 19 June 2007, application no.12066/02, para 111; Kucera v. Slovakia, judgment of 17 July 2007, application no. 4866/98, para 127 – 128).*

Consequently, imprisoned person do not enjoy the right to private life at the same extent as person in freedom.

Consequently, the regulation established in the Contested Norm restricts the right to inviolability of private life as established in Article 96 of the Satversme.

12. The rights guaranteed in Article 96 of the Satversme are not absolute. Article 116 of the Satversme provides that these rights may be subject to restrictions in circumstances provided for by law, if it has a legitimate objective and is proportionate (*see: Judgment of 26 January 2006 by the Constitutional Court in the case No. 2004–17–01, Para 11*).

13. In order to permit such restriction, it must be established by law.

The Contested Norm is included into the Law "On Procedures for Keeping in Custody". Both, the Applicant and the Saeima admit that the restriction has been established by law.

Consequently, in the case under consideration there is no dispute whether the restriction has been established by law.

14. Restriction of basic rights can be justified only in the case if it serves for a particular legitimate objective – to protect the constitutional values of other rank or other important interests, for protection of which the restriction is indispensable (*see: Judgment of 16 May 2007 by the Constitutional Court in*

the case No. 2006-42-01, Para 10). Therefore it is necessary to investigate whether the Contested Norm has been adopted with a view to reach a legitimate objective.

It has been indicated in the reply of the Saeima that the objective of the Contested Norm is prevent unlawful intervention of a person into criminal procedure by thus ensuring exhaustive examination of the case and adoption of an equitable decision. Likewise, by means of this norm, the State is trying to prevent a detained person from committing other criminal offences, escaping the prison or affect witnesses. Consequently, the Contested Norm protects public safety. It is also admitted by the Applicant.

The Constitutional Court agrees with the Saeima and the Applicant and admits that the restriction has a legitimate objective - protection of public safety.

15. The principle of proportionality provides that if the public power restricts rights and legal interests of a person, one has to observe a reasonable balance between the interests of a person and the State of the society. In order to assess, whether the legal provision passed by the legislator complies with the principle of proportionality, one has to investigate:

first, whether the means utilized by the legislator are suitable for achieving the legitimate objective;

second, whether such action is indispensable, i.e., whether the objective cannot be reached by other means that restrict the rights and legal interests of a person at a lesser extent;

third, whether the action of the legislator is proportionate or commensurate, i.e., whether the benefit gained by the society is greater than the losses caused to the rights and legal interests of a person.

If, when assessing the legal provision, it is acknowledged that it is in conflict with at least one of the above criteria, then it is in conflict with the principle of proportionality and is unlawful *(see: Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

16. It is possible to agree with the opinion of the Ombudsman and the Applicant that, when requiring presence of a representative of a prison administration at a visit and by limiting the length of the visits, the possibility to affect witnesses, escape the prison or prevent contacts with criminal world is reduced. Consequently, the restrictions established in the Contested Norm are appropriate for reaching the legitimate objective.

17. It has been indicated in the constitutional claim that the legitimate objective can also be reached by other means that would restrict the rights of a person at a lesser extent. There is no reason to suppose that visit of a detained person with any person could constitute threat to the interests of investigation and public safety. An investigating judge or a court, when assessing a particular situation and the convict, may provide for security measures to be applied during the visits or even prohibit visiting certain persons. Thus there would be no need to establish whether the visit can last one hour and only at presence of a representative of prison administration. According to the Applicant, when assessing each particular situation, it would be possible to restrict the rights of persons at a lesser extent and to ensure the right of detained persons to long visits.

17.1. The words “one hour long" provided in Item 6 of the first part of Article 13 of the Law “On Procedures for Keeping in Custody” deny the right of a detained person to long visits.

As the Applicant has indicated, Section 24.4 of the European Prison Rules provides that the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. In the Commentary to the European Prison Rules it is indicated when explaining this Section of the Law that the visits are of particular significance not only for prisoners but also for their families. It is important that where possible intimate family visits should extent over a long period, for example, 72 hours, as is the case in many eastern European Countries”

[Commentary to Recommendation REC (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, p.11. http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/E%20commentary%20to%20the%20EPR.pdf].

The above quoted norm, however, cannot serve as the basis for a conclusion that a duty of the State to ensure long visits with all prisoners follow from the right of a person to private and family life. Not all European States guarantee the right to long visits to all these persons (*see: Judgment of the European Court of Human Rights in the case Dickson v. the United Kingdom, judgment of 4 December 2007, application no. 44362/04, para 81).* Also in the states where such rights are established they mainly apply to convicts. For instance, in Estonia and Lithuania the right to long visit are provided only for convicts (*see: Imprisonment Act of the Republic of Estonia, Article 25, Art. 87 and Art. 94;* http://www.legaltext.ee/text/en/X30079K5.htm; *Lietuvos Respublikos Bausmiu vykdymo kodeksas, 94 straipsnis,* http://www3.lrs.lt/pls/inter3/dokpaieska.*showdoc_l?p_id=27850094).*

The European Court of Human Rights has approved that the number of States that ensure prisoners the right to long visits is increasing. However, at the same time the European Court of Human Rights has indicated that it does not hold that the duty to ensure the possibilities to arrange long visits would follow from the right to private and family life (*see: Judgment of the European Court of Human Rights in the cases: Aliev v. Ukraine, judgment of 23 April 2003, application no. 41220/98, para 188; Dickson v. the United Kingdom, judgment of 4 December 2007, application no. 44362/04, para 81).* Moreover, the European Court of Human Rights has stick to the same opinion after adoption of the European Prison Rules and the Commentaries thereto.

Consequently, no duty of the State to ensure the possibilities for detained persons to have long visits follows from the rights to private and family life as established in the Satversme.

Consequently, the words “one hour long” of Item 6 of the first part of Section of the Law “On Procedures for Keeping in Custody” comply with the Satversme insofar as it denies the rights of prisoners to long visits.

17.2. It must be concluded, however, that the regulation regarding the length of a visit established in the Law does not only deny the right of a prisoner to have long visits but it also limits the length of the visit. A detained person is deprived of the right, for instance, to have two or three hour long visit. Moreover, such restriction is being automatically applied to all detained persons.

The European Court of Human Rights has recognized that strict regulation regarding frequency and length of visits that does not provide for any possibility to assess a particular situation infringes the rights to private and family life. For instance, the European Court of Human Rights has recognized in the case *Moiseyev v. Russia* that Article 8 of the Convention has been breached by providing in the Law that a detained person should be allowed to have no more than two short visits of family and other persons per month and these visits may not last longer than three hours (*see: Judgment of the European Court of Human Rights in the case Moiseyev v. Russia, judgment of 9 October 2008, application no. 62936/00, paras 252 – 256).*

The Constitutional Court admits that in separate cases it may be necessary to restrict the length of a visit in order to provide for timely control of events. However, these are only exceptional cases when, for instance, relatives of a detained person are related with the criminal world or are witnesses at the criminal procedure. Likewise, this restriction may be justified by the amount of resources at the disposal of the place of imprisonment. But not always these conditions are present. Moreover, there can be a situation when a one hour long visit does not ensure an appropriate possibility to enjoy the rights to private life. Such a situation can emerge in the case if a detained person is placed in a prison located far from the living place of their relatives, which means that they cannot meet the prisoner each month. Likewise, it is necessary to take into account the period of imprisonment. Therefore the rights

of a person would be restricted at a lesser extent by a regulation that would allow deciding on the length of a visit after having assessed a particular situation.

Item 6 of the first part of Section 13 of the Law “On Procedures for Keeping in Custody” provides for a flexible regulation regarding frequency of visits, namely, it is established that one hour long meeting shall be provided not less frequent than one per month. Consequently, this regulation ensures sufficient protection of prisoners because it provides for the minimum number of visits. At the same time, it permits assessing individual circumstances of a person (for instance, the term that a person has spent in custody etc.), stage of criminal procedure and the control necessary for the protection of interests of investigation, as well as resources that are at disposal of the place of imprisonment and provide for more than one visit per month under certain circumstances.

As to the length of a visit, it is possible to provide that a detained person must be ensured with at least one hour long visit. Thus a detained person would be provided with minimum guarantees by at the same time allowing ensuring longer visits when possible. Maybe there are other solutions how to make the regulation regarding the length of a visit more flexible by ensuring a possibility to asses each particular situation and individual circumstances. In the judgment, the Constitutional Court must not enumerate all possible measures that would restrict the rights of a person at a lesser extent. Having established that there exists at least one more lenient remedy, it is possible to recognize that the Contested Norm restricts the basic rights of a person in a non-proportionate manner.

Consequently, the words "one hour long" of Item 6 of the first part of Section 13 of the Law "On Procedures for Keeping in Custody" restrict the right of a person to private live at a non-proportionate manner and thus does not comply with Article 96 of the Satversme.

17.3. Item 6 of the first part of Section 13 of the Law “On Procedures for Keeping in Custody” provides that a prisoner shall have the right to visit

with relatives or other persons not more often than one per month and at presence of a representative of prison administration.

When explaining how the presence of a representative of prison administration would be ensured, the Latvian Prison Administration indicates that in prison premises for short visits prisoners are separated from visitors by means of a glass wall. Conversation between a prisoner and a visitor takes places via telephone. Consequently, no physical contact is possible between a prisoner and a visitor. There are four to eight cabins in one room. The representative of the prison administration is provided with a separate room, from which he can see both, prisoners and visitors. The room of the representative of the prison administration is equipped with a device that permits listening to conversation in any cabin.

17.3.1. The European Committee for the Prevention of Torture has indicated that physical separation of a prisoner and a visitor in certain cases may be necessary due to consideration of security. However, such measures can only be applied after having established certain infringement of security rather that automatically to all prisoners (*see, e.g.: Judgment of the European Court of Human Rights in the cases: Ciorap v. Moldova, judgment of 19 June 2007, application no. 12066/02, para 117-118; Moiseyev v. Russia, judgment of 9 October 2008, application no. 62936/00, para 258 and the Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 January to 3 February 1999, para 182. http://www.cpt.coe.int/documents/lva/2001-27-inf-eng.ht]*.

The second part of Section 13 of the Law "On Procedures for Keeping in Custody" provides that a court or an investigating judge may restrict the rights mentioned in Item 6 of the first part of this Section, namely, the right to have a visit. Section 271 of the Criminal Procedure Law also regulates the issue regarding restriction of the rights of a prisoner. The second part of this Section provides that application of detention shall be the basis for a restriction on the rights of a person, and shall allow the holding of the persons in an investigation

prison or in specially equipped police premises, a restriction on the meetings and contacts of the detained person, except for meetings with a defence counsel, as well as a control on the correspondence and conversation of the detained person. On the other hand, the third part of Section 271 of the Criminal Procedure Law provides that an investigating judge shall determine the amount of restrictions individually for each detained person, within the boundaries specified by law, assessing the proposals of an investigation or public prosecutor, hearing the views of the detained person, as well as taking into account the nature of the criminal offence, and the reason for detention. Consequently, it has been provided by law that a court or an investigating judge may restrict the range of the person that a detained person is allowed to meet and to provide for security measures, including separation of persons by means of a glass wall. This shall be regarded as a less restrictive measure if compared to automatic physical separation of prisoners and visitors. Taking into account the aforesaid, the fact that in the prison premise for short meetings a prisoner is separated from visitors by means of a glass wall shall be regarding as a non-proportionate restriction of the right to private life.

Although this non-proportionate restriction exists, it does not follow from the Contested Norm. The Contested Norm only provides that a meeting may take place only at presence of a representative of prison administration but this does not mean that a prisoner must be separated from a visitor by means of a glass wall. The Norm can also be implemented by ensuring actual presence of a representative of prison administration in the room without dividing the premise into separate rooms by means of a glass wall. Consequently, there is no reason to recognize the Contested Norm as non-compliant with the Satversme because of the planning of prison premise for short visits.

17.3.2. Under the Contested Norm, during the entire period of imprisonment meetings with relatives of each detained person is subject to supervision and audited by a representative of prison administration. All prisoners disregarding the fact whom they are meeting with are subject to such

a procedure. Consequently, it shall be regarded that this regulation restricts the right of persons to private life in a non-proportionate manner.

Moreover, as it was indicated by the Ombudsman, such detention may last even for three years. It is necessary to take into consideration the fact that in Latvia a person shall be regarded as a detained person until ā verdict of guilty comes into effect. Consequently, at the time when an appeal or cassation claim is being reviewed, a person shall be regarded as a detained person.

There is no doubt that a situation may emerge when it is necessary to supervise and audit a visit due to the interests of investigation and security considerations. However, Section 271 of the Criminal Procedure Law allows a court or an investigating judge assessing each particular case individually and providing for the necessary security measures that should be applied to a visit. Consequently, a court or an investigating judge, when assessing several conditions, including the term spend in detention, stage of a criminal procedure and other circumstances, could decide on the necessity to supervise and audit a person during the visit and, if necessary, whether to carry out visual supervision only, or auditing, too. Such individual assessment of each particular case shall be regarded as a less restrictive measure.

Consequently, the words “at presence of a representative of an investigation prison administration" of Item 6 of the first part of Section 13 of the Law “On Procedures for Keeping in Custody”, insofar as they do not provide for individual assessment of circumstances, restricts the rights guaranteed in Article 96 of the Satversme in a non-proportionate manner.

18. According to the third part of Article 32 of the Constitutional Court Law, Any legal norm (act) which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

When providing for the date when contested norms lose their force, the Constitutional Court shall take into consideration the fact that the legislator

needs time to introduce necessary amendments into normative acts. Likewise, the Constitutional Court shall take into account the fact that it requires time for a court and investigating judge to apply the restrictions provided for by law for each detained person.

The Constitutional Court

Based on articles 30 - 32 of the Constitutional Court Law

h o l d s :

the words “one hour long” of Item 6 of the first part of Section 13 of the Law "On Procedures for Keeping in Custody” insofar as they provide for the maximum time of short visits and the words “at presence of a representative of an investigation prison administration” of Item 6 of the first part of Section 13 of the same Law insofar as they do not provide for individual assessment of a particular case, do not comply with Article 96 of the Satversme of the Republic of Latvia and shall be invalid as from 1 December 2009.

The Judgment is final and not subject to appeal.

The Judgment comes into force as on the date of publishing it.

The Presiding Judge G. Kūtris