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**The norm, which envisaged control over the entire private correspondence of a person during the whole period of arrest, is incompatible with Article 96 of the *Satversme***

On 28 June 2019, the Constitutional Court passed the judgement in case No. 2018-24-01 “On Compliance of Section 28 (2) of the Law “On the Procedure for Holding under Arrest”, in the wording that was in force until 2 January 2018, with Article 96 of the *Satversme* of the Republic of Latvia”.

**The Contested Norm**

Section 28 (2) of the law “On the Procedure for Holding under Arrest”, in the wording that was in force until 2 January 2018, provided: “Employees of an investigation prison shall control correspondence and telephone conversations of an arrested person (except correspondence and telephone conversations with the addressees referred to in Section 15 (3) of this Law). If the content of correspondence and telephone conversations endangers the rights of other persons, democratic structure of the State, public safety, welfare and morals, ascertaining of the truth in criminal proceedings, as well as safety of places of imprisonment, the correspondence shall be intercepted or the telephone conversation shall be interrupted and the arrested person shall be explained the reasons for intercepting the correspondence or interrupting of the conversation.”

**The Norm of Higher Legal Force**

Article 96 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*): “Everyone has the right to inviolability of his or her private life, home and correspondence.”

**The Facts**

The case was initiated on the basis of an application by the Supreme Court (hereinafter – the Applicant). It is hearing an administrative case, initiated on the basis of a person’s application requesting to recognise as unlawful the actual actions by the investigation

prison and compensation of moral damages. The person's correspondence had been controlled in the place of imprisonment on the basis of the contested norm. The Applicant noted that the contested norm was incompatible with Article 96 of the *Satversme* since the restriction included in it had not been established by a law adopted in due procedure and did not comply with the principle of proportionality.

### **The Court's Findings**

In view of the Applicant's arguments, the Constitutional Court recognised that, in the present case, the compliance of the contested norm with Article 96 of the *Satversme* should be examined insofar the contested norm envisaged controlling the private correspondence of an arrested person [8.]

#### On the restriction on Fundamental Rights

The Constitutional Court noted that the right to inviolability of correspondence comprised also the right to communicate freely with persons, retaining the personal nature of mutual communication and confidentiality that protects such communication in certain situations. Any person, *inter alia*, also an arrested person may be the subject of this fundamental right. Moreover, isolation from society can increase the risk of the abuse of power in places of imprisonment. Therefore the right of an arrested person to communicate with persons outside places of imprisonment is so important, and it is important that an arrested person could both forward and receive letters and other postal items, with his or her privacy being respected. Hence, the Constitutional Court found that Article 96 of the *Satversme* protected also the inviolability of arrested persons' correspondence. [9.]

The Constitutional Court recognised that the obligation established in the contested norm to open and verify the private correspondence of an arrested person, as well as the right, in certain cases, to intercept the private correspondence of an arrested person, caused a restriction on the fundamental rights of this person established in Article 96 of the *Satversme*. [10.]

#### On the clarity of the contested norm

The Constitutional Court found that the arrested persons were informed that, following their placement in the investigation prison, pursuant to the contested norm, their private correspondence was controlled within a reasonable term, *inter alia*, by verifying its content and, if necessary, intercepting the correspondence; likewise, the arrested persons were informed about the legal remedies available to them. The Constitutional Court recognised that the contested norm did not grant discretion to the employees of an investigation prison with respect to opening correspondence and verifying its content. The contested norm also defines the cases when correspondence may be intercepted and establishes an obligation, if it is intercepted, to explain immediately to the arrested persons the reason for intercepting correspondence.

The Constitutional Court found that the contested norm had been defined with sufficient clarity, allowing the arrested person to understand the content of the restriction that followed from the contested norm and to predict reasonably the consequences of application thereof. [12.]

#### On the legitimate aim of the restriction

The Constitutional Court upheld the opinion of the participants of the proceedings and the summoned persons that the restriction on the inviolability of the arrested persons' correspondence had been established in public interests to prevent threats to order and safety and ensure an undisturbed course of criminal proceedings. An undisturbed course of criminal proceedings protects, *inter alia*, the victims' right to a fair course of criminal proceedings as well as the witnesses' right and obligation to give true testimony. The Constitutional Court concluded that, thus, both public safety and the rights of other persons were protected by the restriction included in the contested norm. [13.]

The Constitutional Court noted: by controlling the arrested persons' correspondence, the administration of investigation prison could familiarise itself with the content of the correspondence and find out about the arrested person's intentions and activities, which, possibly, were directed against the order of the investigation prison or the aims of the applied security measure – arrest. Hence, the Constitutional Court found that control of

correspondence was an appropriate measure for reaching the legitimate aim of the restriction on fundamental rights – protecting the rights of other persons and public safety. [15.]

On alternative measures for reaching the legitimate aim

The Constitutional Court noted that the legitimate aims of the restriction on fundamental rights included in the contested norm – protecting other persons’ rights and public security – could be reached also by such control of correspondence, pursuant to which the responsible official conducted an individual assessment of circumstances and controlled the arrested person’s correspondence, by opening, reading or intercepting it, if it was necessary for preventing the risk that the rights of other persons could be violated or that public security could be endangered. The intensity and form of control could depend on various conditions; *inter alia*, the length of arrest and the arrested person’s conduct in the place of imprisonment. Thus, the arrested person’s correspondence could be verified, *inter alia*, opened, read or intercepted, if the responsible official had grounds for conducting such control and the particular type of control had been chosen to prevent one of the risks referred to above. The person, in turn, could, in accordance with the Administrative Procedure Law, appeal against the actual actions – control of correspondence, and, accordingly, a court could verify, whether in the particular case, in view of individual circumstances, the need to control the arrested person’s correspondence could be identified in order to prevent a violation of other persons’ rights or a threat to public safety. In this particular case, it should be assessed, *inter alia*, whether the control was performed in a scope that was necessary to prevent any of the risks referred to above.

Hence, the Constitutional Court found that more lenient measures existed to reach the legitimate aim of the restriction on fundamental rights established in the contested norm – controlling correspondence in the case where, following individual assessment of circumstances a valid need to conduct such control was identified, and in the scope to prevent a threat to other persons’ rights and to public security. Therefore the Constitutional Court recognised that the contested norm, insofar it envisaged control of correspondence for the whole duration of arrest without an individual assessment of circumstances and

without an identified threat to other persons' rights or public security, was incompatible with Article 96 of the *Satversme*. [16.]

#### On the retroactive force of the judgement

The Constitutional Court took into account the fact that in the case where a person's fundamental rights had been infringed upon due to the application of the contested norm, recognising the contested norm as void as of the moment when the infringement on fundamental rights occurred with respect to persons, who had started to defend their rights in the framework of administrative procedure, was the only possibility to protect the fundamental rights of these persons. Therefore the Court found that with respect to persons, to whom this norm had been applied and who had begun defending their rights in the framework of an administrative procedure but with respect to whom the administrative proceedings had not been concluded yet, the norm should be recognised as being void as of the moment when the infringement on the rights of these persons occurred. [17.]

The Constitutional Court drew attention to the fact that the administrative court should verify, by assessing the circumstances of the particular case, whether in the cases, in which actual actions were appealed against, and that were examined in administrative proceedings, circumstances had been present that would allow performing control and whether the institution had chosen the most proportional type of control of correspondence. [16.]

#### **The Constitutional Court held:**

**to recognise Section 28 (2) of the law "On the Procedure for Holding under Arrest", in the wording that was in force until 2 January 2018, insofar it envisages control of correspondence for the whole duration of arrest without an individual assessment of circumstances and without an identified threat to other persons' rights or public security, as being incompatible with Article 96 of the *Satversme* and with respect to persons, to whom this norm had been applied and who have begun defending their rights in the framework of an administrative procedure but with respect to whom the administrative proceedings have not been concluded yet, as void as of the moment when the infringement on the rights of these persons occurred.**

The judgement of the Constitutional Court is final and not subject to appeal, it enters into force on the day of its publication. The text of the judgement is available on the homepage of the Constitutional Court [in Latvian]:  
[http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/12/2018-24-01\\_Spriedums.pdf#search=](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/12/2018-24-01_Spriedums.pdf#search=)

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The press release was prepared with the aim to facilitate understanding of cases heard by the Constitutional Court. It shall not be regarded as part of the ruling and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court [www.satv.tiesa.gov.lv](http://www.satv.tiesa.gov.lv).

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