



Press release

Case No 2021-40-0103

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The regulation which does not provide for a detained person to be provided with a pillow and a towel violates the prohibition of cruel and degrading treatment and, accordingly, does not comply with the second sentence of Article 95 of the Constitution

On 8 June 2022, the Constitutional Court adopted a judgment in the Case No 2021-40-0103 **“On Compliance of Section 7, Paragraph four, Clause 2 of the Law on the Procedures for Holding the Detained Persons and Annex 4 to the Cabinet Regulation No. 38 of 10 January 2006, “Regulations Regarding Nutritional Provision Norms and Provision Norms of Washing Products and Personal Hygiene Products for Persons Placed in a Short-term Place of Detention” with the second sentence of Article 95 of the Constitution of the Republic of Latvia”**.

THE CONTESTED PROVISIONS

- Section 7, Paragraph four, Clause 2 of the Law on the Procedures for Holding the Detained Persons

(hereinafter – the contested provision of the Law): each detained person shall be provided with bedding (mattress and blanket).

- Annex 4 to the Cabinet Regulation No. 38 of 10 January 2006, “Regulations Regarding Nutritional Provision Norms and Provision Norms of Washing Products and Personal Hygiene Products for Persons Placed in a Short-term Place of Detention”, (hereinafter – the contested provision of the Regulation) provides that a detained person shall be provided with: one toothbrush, toothpaste (20 ml per day), toilet paper (30 metre roll for 10 days), liquid toilet soap (40 ml per day), if necessary – sanitary napkins (10 pieces).

PROVISION WITH A HIGHER LEGAL FORCE

- The second sentence of Article 95 of the Constitution of the Republic of Latvia (hereinafter- the Constitution): “Torture or other cruel or degrading treatment of human beings is prohibited”.

FACTS OF THE CASE

The case was initiated on the basis of an application of the District Administrative Court. The District Administrative Court is hearing an administrative case concerning the recognition of the action of the State Police in not providing a person with a pillow and a towel as unlawful and concerning compensation for non-material damage. The State Police has stated in this case that the conditions of stay were in accordance with the requirements of the legislation. The District Administrative Court holds that the contested regulation, which does not stipulate the provision of the aforementioned objects, is not compatible with the second sentence of Article 95 of the Constitution.

The CONCLUSIONS of the Court

The second sentence of Article 95 of the Constitution implies the obligation of the State to ensure conditions in places of deprivation of liberty that are compatible with human dignity and to prevent cruel or degrading treatment of a person. This right is absolute, and no derogation is allowed. At the same time, treatment can only be considered cruel or degrading where it exceeds the minimum severity level of cruelty and degradation that would necessarily result from a person being held in a temporary place of detention. Consequently, the Constitutional Court had to ascertain whether the contested provision exceeded such a degree of severity [7.4, 9, 11].

On the period for which the detained persons are exposed to the effects of the contested provision

Upon examining the impact of the contested provision on the detained persons, the Constitutional Court concluded persons could stay in temporary places of detention for different periods of time depending on their status. In some cases, such stays have lasted up to 20 days. These time periods were taken into account when assessing the impact of the contested provision [10.3].

Effect of not issuing a pillow on the detained person

First, the Constitutional Court assessed the constitutionality of the contested provision of the Law, which does not provide that a pillow must be given to a detained person.

The review found that spending several nights without a pillow can cause health problems and have a negative effect on the well-being of a person. Moreover, in any event, physically uncomfortable sleep does not in itself constitute a circumstance which would inevitably follow from the fact of deprivation of liberty. Similarly, the absence of a pillow can cause a person both physical and mental suffering and a deep sense of resentment, not least because it is a particularly painful reminder for the person that they are located in uncomfortable premises and are separated from their usual environment [12.1].

Consequently, the Constitutional Court held that Section 7, Paragraph four, Clause 2 of the Law on the Procedures for Holding the Detained Persons infringes the prohibition of cruel and degrading treatment and, accordingly, does not comply with the second sentence of Article 95 of the Constitution.

Effect of not issuing a towel on the detained person

When assessing the contested provision of the Regulation, which do not provide for issuing a towel to the detained person, the Constitutional Court concluded that the inability to wash exposes a person not only to humiliation in the eyes of both themselves and the public, but also to a health risk. A person's right to maintain his or her personal hygiene cannot be deprived simply because they are located in a temporary place of detention. In order to exercise the right to hygiene, a person needs a towel. Although detained persons have the right to receive a towel by way of a parcel or to take it with them from the prison, this does not mean that all persons are able to make use of these possibilities [13.1, 13.2].

Having considered the fact that the contested provisions have been issued on the basis of an authorisation, the Constitutional Court concluded that the Cabinet was not prohibited from providing that detained persons should also be provided with a towel; on the contrary, such an action would comply with the essence of the authorisation. The Cabinet had to make a practical and active assessment of how long persons are kept in temporary places of detention and what they need – in practice, not formally – in order to ensure that such stay complies with the principle of human dignity [13.2.2].

Consequently, the Constitutional Court held that Annex 4 to Regulation No 38, in so far as it does not provide for the provision of a towel, infringes the prohibition of cruel and degrading treatment and, accordingly, does not comply with the second sentence of Article 95 of the Constitution.

The Constitutional Court emphasised that since the adoption of the Law on the Procedures for Holding the Detained Persons and the provisions of Regulation No 38, society has continued to develop with an increased awareness of human dignity, as well as an increase in state financial resources, as well as several reports on the situation in temporary places of detention had been published. Consequently, the adopters of legal provisions had grounds to reassess the contested provision in order to prevent treatment incompatible with human dignity. The legislator was also obliged to notice that, by not providing for the issuing of a towel to detained persons, the provisions of Cabinet Regulation were inconsistent with the authorisation and to eliminate this inconsistency. However, this has not been done [14].

On ensuring the rights of detained persons until the entry into force of a new regulation

According to the amended legislation, from 1 January 2023, a pillow and a towel will be provided in each temporary place of detention. However, until that date, respect for the rights of persons detained must be ensured in accordance with this judgment, as well as by assessing the duration of the stay of persons in the temporary places of detention and other possibilities to ensure that they are treated with human dignity [15].

The Constitutional Court ruled the following:

- 1. To declare Section 7, Paragraph four, Clause 2 of the Law on the Procedures for Holding the Detained Persons, insofar as it does not provide for a pillow to be provided to detained persons, and Annex 4 to Cabinet Regulation No 38 of 10 January 2006 “Regulations Regarding Nutritional Provision Norms and Provision Norms of Washing Products and Personal Hygiene Products for Persons Placed in a Short-term Place of Detention”, insofar as it does not provide for a towel to be provided to the detained person, as incompatible with the second sentence of Article 95 of the Constitution and invalid.**
- 2. In respect of the persons who have sought protection of their fundamental rights by means of legal remedies, to declare Section 7, Paragraph four, Clause 2 of the Law on the Procedures for Holding the Detained Persons, insofar as it does not provide for a pillow to be provided to detained persons, and Annex 4 to Cabinet Regulation No 38 of 10 January 2006 “Regulations Regarding Nutritional Provision Norms and Provision Norms of Washing Products and Personal Hygiene Products for Persons Placed in a Short-term Place of Detention”, insofar as it does not provide for provision of a towel to the detained person, as incompatible with the second sentence of Article 95 of the Constitution and invalid from the moment of the infringement of the fundamental rights of the person.**

The judgment of the Constitutional Court shall be final and not subject to appeal; it shall take effect on the day of the publication thereof.

The text of the judgment is available (in Latvian) on the website of the Constitutional Court: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/10/2021-40-0103_Spriedums.pdf