Case No. 1/2013

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA**

**IN THE NAME OF THE REPUBLIC OF LITHUANIA**

**RULING**

**ON THE COMPLIANCE OF PARAGRAPH 2 OF ARTICLE 99 OF THE CODE OF THE ENFORCEMENT OF PUNISHMENTS OF THE REPUBLIC OF LITHUANIA WITH THE CONSTITUTION OF THE REPUBLIC OF LITHUANIA**

26 February 2015, No. KT8-N4/2015

Vilnius

The Constitutional Court of the Republic of Lithuania, composed of the Justices of the Constitutional Court: Elvyra Baltutytė, Vytautas Greičius, Danutė Jočienė, Pranas Kuconis, Gediminas Mesonis, Vytas Milius, Egidijus Šileikis, Algirdas Taminskas, and Dainius Žalimas

The court reporter—Daiva Pitrėnaitė

The Constitutional Court of the Republic of Lithuania, pursuant to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1 and 531 of the Law on the Constitutional Court of the Republic of Lithuania, on 12 February 2015, at the Court’s hearing, considered, under written procedure, constitutional justice case No. 1/2013 subsequent to petition No. 1B-41/2012 of the Supreme Administrative Court of Lithuania, the petitioner, requesting an investigation into whether Paragraph 2 of Article 99 of the Code of the Enforcement of Punishments of the Republic of Lithuania (wording of 27 June 2002) is not in conflict with Paragraph 2 of Article 22 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

The Constitutional Court

**has established:**

**I**

The petition of the Supreme Administrative Court of Lithuania, the petitioner, is substantiated by the following arguments.

Under Paragraph 2 of Article 99 of the Code of the Enforcement of Punishments (wording of 27 June 2002) (hereinafter also referred to as the Code), correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities is prohibited in the cases where they are not spouses or close relatives; however, under Paragraph 1 of Article 99 of the Code, correspondence between convicts and persons other than convicts is not limited. The similar situations (correspondence between convicts who are not spouses or close relatives and correspondence between convicts and persons other than convicts) have been regulated by the legislature in a different manner without any clear legal grounds.

According to the official constitutional doctrine, the right of convicts to the inviolability of correspondence may be limited only by means of a law; the limitation in question must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective; in order to achieve this objective, such measures can be established that would be sufficient and would not limit the rights and freedoms of the person more than necessary. The prohibition laid down in Paragraph 2 of Article 99 of the Code is not in line with the requirement that there must be a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective, since the legitimate and universally important objectives pursued through this prohibition could be achieved by means of less restrictive measures. The constitutional principle of a state under the rule of law implies that the legislature, when establishing limitations on (conditions for) correspondence of convicts, must observe, *inter alia,* the requirements deriving from the principles of proportionality and justice.

**II**

In the course of preparing the case for the Constitutional Court’s hearing, written explanations were received from Seimas member Vitalijus Gailius, acting as the representative of the Seimas, the party concerned, where it is maintained that the impugned legal regulation is not in conflict with the Constitution. The position of the representative of the party concerned is substantiated by the following arguments.

Limitations imposed on convicts are the objective elements constituting the content of the punishment of deprivation of liberty; without these limitations, a deprivation of liberty would lose its sense. The limitations must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective. The following two objectives pursued by the legislature through the prohibition in question can be defined. First of all, this prohibition is aimed at preventing criminal deeds and other violations of law. In addition to the objective of prevention, this prohibition is also determined by the limited capabilities of the administration of a correctional facility to censure the correspondence at issue. Second, the prohibition on correspondence with other convicted persons where they are not spouses or close relatives is founded on the belief that such communication would impede the proper resocialisation of convicts. Under Item 4 of Paragraph 2 of Article 41 of the Criminal Code of the Republic of Lithuania, one of the purposes of a punishment is to exert an influence on persons who have served their sentence to ensure that they comply with laws and do not relapse into crime. The same objective is pursued by limiting the contacts of convicts with the social environment that is unfavourable to the resocialisation of their personality. Thus, the effectiveness of a punishment is enhanced and a positive influence is exerted on the behaviour of convicted persons.

The striving for a state under the rule of law, as consolidated in the Preamble to the Constitution, implies the duty of the state to provide for and ensure the measures that are designed to prevent criminal attempts or other violations of law and are intended to enhance the effectiveness of social rehabilitation of convicted persons. Due to this reason, the prohibition on correspondence between convicts detained in the places of deprivation of liberty in the cases where these convicts are not spouses or close relatives is proportionate and is aimed at achieving certain legitimate and universally important objectives, which could not be achieved through less restrictive measures.

**III**

In the course of preparing the case for judicial consideration, Prof. Habil. Dr. Gintaras Švedas, a specialist and the Head of the Department of Criminal Justice of the Faculty of Law of Vilnius University, was questioned and a written opinion from Juozas Bernatonis, the Minister of Justice of the Republic of Lithuania, was received.

The Constitutional Court

**holds that:**

1. The Supreme Administrative Court of Lithuania, the petitioner, requests an investigation into whether Paragraph 2 of Article 99 of the Code is not in conflict with Paragraph 2 of Article 22 of the Constitution and the constitutional principle of a state under the rule of law. The arguments in the petition make it clear that the petitioner impugns the compliance of the legal regulation established in Paragraph 2 of Article 99 of the Code with the Constitution insofar as this legal regulation prohibits correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties.

Thus, in the constitutional justice case at issue, the Constitutional Court will investigate whether Paragraph 2 of Article 99 of the Code, insofar as it establishes the legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties, is not in conflict with Paragraph 2 of Article 22 of the Constitution and the constitutional principle of a state under the rule of law.

2. On 27 June 2002, the Seimas adopted the Law on the Approval of the Code of the Enforcement of Punishments of the Republic of Lithuania, by Article 1 of which, the Seimas approved the Code of the Enforcement of Punishments; the Code came into force on 1 May 2003.

2.1. Article 99 “The Right of Convicts to Correspondence”, which is in the sixth section “Special Rights and Duties of Convicts Subject to Punishments of Deprivation of Liberty” of the Code, prescribes:

“1. Convicts shall be allowed to send and receive an unlimited number of letters.

2. Correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not spouses or close relatives shall be prohibited.

<...>

5. Letters received and sent by convicts may be subject to censorship upon a reasoned resolution of the prosecutor or the director of the correctional facility, or upon a ruling of a court (judge), in order to prevent violations or criminal deeds or to protect the rights and freedoms of other persons.”

2.2. Thus, Paragraph 1 of Article 99 of the Code consolidates the right of convicts subject to punishments of deprivation of liberty (hereinafter also referred to as convicts) to send and receive an unlimited number of letters, i.e. the right of convicts to correspondence.

Paragraph 2 of Article 99 of the Code, the compliance of which with the Constitution is impugned by the petitioner, lays down the general prohibition on correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities (hereinafter also referred to as the places of deprivation of liberty) in the cases where these convicts are not related by marriage or close family ties.

2.3. Paragraph 5 of Article 99 of the Code consolidated a limitation on the right of convicts to correspondence—the censorship of the letters of convicts, which was aimed at preventing violations or criminal deeds or protecting the rights and freedoms of other persons. This limitation could be imposed upon the adoption of individual legal acts by three subjects, i.e. upon a reasoned resolution of the prosecutor or the director of the correctional facility, or upon a ruling of a court (judge). In view of the prohibition in Paragraph 2 of Article 99 of the Code, laid down on correspondence between convicts detained in the places of deprivation of liberty where these convicts are not related by marriage or close family ties, under Paragraph 5 of Article 99 of the Code, censorship could be imposed on the letters received (sent) by convicts detained in the places of deprivation of liberty when they corresponded with their convicted spouses or close relatives detained in the places of deprivation of liberty, as well as with all other persons who were not convicts detained in the places of deprivation of liberty.

2.4. On 14 January 2010, the Seimas adopted the Republic of Lithuania’s Law Amending and Supplementing Articles 32, 36, 51, 54, 60, 61, 66, 67, 70, 72, 76, 85, 96, 99, 100, 105, 112, 114, 118, 120, 121, 142, 143, 146, 154, 155, 165, and 183 and Annex 1 of the Code of the Enforcement of Punishments as well as Recognising Article 149 Thereof as No Longer Valid (which came into force on 1 March 2010), by Article 14 of which, Article 99 of the Code was amended. It should be noted that the said law did not amend the impugned legal regulation consolidated in Paragraph 2 of Article 99 of the Code; however, it amended Paragraph 5 of Article 99 of the Code.

2.4.1. Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code was set forth in the following way:

“Upon a resolution of the director of the correctional facility, or upon a ruling of a court (judge), letters received and sent by convicts may be subject to screening in order to prevent violations or criminal deeds or to protect the rights and freedoms of other persons. The resolution of the director of the correctional facility, or the ruling of a court (judge), must indicate the grounds for, as well as the duration and manner of, screening the letters, the persons whose outgoing and incoming letters are to be screened, as well as other circumstances due to which it is necessary to screen the letters.”

2.4.2. As it is clear from the Explanatory Note to the Draft Republic of Lithuania’s Law Amending and Supplementing Articles 32, 36, 51, 54, 60, 61, 66, 67, 70, 72, 76, 85, 96, 99, 100, 105, 112, 114, 118, 120, 121, 142, 143, 146, 154, 155, 165, and 183 and Annex 1 of the Code of the Enforcement of Punishments, the amendment of Paragraph 5 of Article 99 of the Code was aimed at replacing the notion “censorship of letters” with “screening of letters”, thus making the use of the notion uniform with Article 16 of the Republic of Lithuania’s Law on the Enforcement of Pre-trial Detention.

2.4.3. It should be noted that the provisions of Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code consolidate a limitation on the right of convicts to correspondence—the screening of the letters of convicts, which is aimed at preventing criminal deeds or other violations of law or protecting the rights and freedoms of other persons. It should also be noted that the grounds for, as well as the duration and manner of, this limitation, the persons whose outgoing and incoming letters are to be screened, as well as other circumstances due to which it is necessary to screen the particular letters, must be specified in a resolution of the director of the correctional facility, or a ruling of a court (judge). In view of the prohibition in Paragraph 2 of Article 99 of the Code, laid down on correspondence between convicts detained in the places of deprivation of liberty where they are not related by marriage or close family ties, under Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code, screening may be imposed on the letters received (sent) by convicts detained in the places of deprivation of liberty when they correspond with their convicted spouses or close relatives detained in the places of deprivation of liberty, as well as with all other persons who are not convicts detained in the places of deprivation of liberty.

2.4.4. After comparing the legal regulation established in Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code with that established in Paragraph 5 (wording of 27 June 2002) of Article 99 of this code, it should be noted that:

– the objectives of both the censorship and screening of the letters of convicts are the same—to prevent criminal deeds or other violations of law or to protect the rights and freedoms of other persons;

– both the censorship and screening of the letters of convicts is applied on the grounds of individual legal acts (a resolution or ruling);

– differently from Paragraph 5 (wording of 27 June 2002) of Article 99 of the Code, Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code specifies the requirements for the individual legal acts on the grounds of which the screening of the letters of convicts can be imposed: these legal acts must indicate the grounds for, as well as the duration and manner of, screening the letters, the persons whose outgoing and incoming letters are to be screened, as well as other circumstances due to which it is necessary to screen the particular letters.

2.4.5. In summarising the legal regulation laid down in Paragraph 5 (wording of 14 January 2010) of Article 99 of the Code, it should be noted that:

– the screening of the letters of convicts is a measure limiting the right of convicts to correspondence and it is aimed at preventing criminal deeds or other violations of law or protecting the rights and freedoms of other persons;

– this measure is applied on the grounds of the individual legal acts adopted by the subjects authorised by law (the director of the correctional facility or the ruling of a court (judge));

– this measure is applied to concrete persons in view of the circumstances due to which it is necessary to screen their letters;

– this measure has a temporary character.

3. It should be noted that other provisions of the Code similarly consolidate other measures through which the right of convicts to correspondence may be limited.

3.1. Item 1 of Paragraph 1 of Article 119 “The Rights of the Director of a Correctional Facility in the Event of Unlawful Group Actions of Convicts, by Which They Grossly Violate the Internal Order of the Correctional Facility” of the Code prescribes that in the cases where convicts engage in unlawful group actions grossly violating the internal order of the correctional facility, the director of the correctional facility or an official deputising the director, having notified the Director of the Prison Department or an official deputising the Director of the Prison Department, as well as having notified the prosecutor, has the right, upon issuing an order, to temporarily withhold “the sending of the outgoing letters of the convicts, as well as the delivery of the received letters and postal or hand-delivered parcels and small packages with the press to the convicts”.

Thus, this legal regulation provides for the right of the director of a correctional facility or an official deputising the director of a correctional facility, upon issuing an order, to limit, *inter alia,* the right of convicts detained in the correctional facility to correspondence, i.e. to temporarily withhold the sending of the outgoing letters of the convicts, as well as the delivery of the received letters to the convicts, in the cases where the convicts concerned engage in unlawful group actions, grossly violating the internal order of the correctional facility. In view of the prohibition in Paragraph 2 of Article 99 of the Code, laid down on correspondence between convicts detained in the places of deprivation of liberty where they are not related by marriage or close family ties, under Item 1 of Paragraph 1 of Article 119 of the Code, the sending of the outgoing letters of convicts and the delivery of the received letters to convicts, i.e. the correspondence of convicts with their convicted spouses or close relatives detained in the places of deprivation of liberty, as well as with other persons who are not convicts detained in the places of deprivation of liberty, may be temporarily withheld.

It should be noted that the temporary withholding of the sending of the outgoing letters of convicts detained in the places of deprivation of liberty and of the delivery of the received letters to them, as provided for under Item 1 of Paragraph 1 of Article 119 of the Code, constitutes:

–a measure limiting the right of convicts to correspondence, which is taken in response to the unlawful group actions of convicts by which they have grossly violated the internal order of the respective correctional facility;

– a measure applied on the grounds of the individual legal acts adopted by the subjects authorised by law (the director of the correctional facility or an official deputising the director of the correctional facility);

– a measure of a temporary character.

3.2. Paragraph 1 (wording of 14 January 2010) of Article 146 “The Conditions of Holding Convicts in Penal or Disciplinary Isolation Units and Punishment Cells” of the Code, *inter alia,* prescribes: “Convicts placed in penal or disciplinary isolation units and punishment cells shall have no right to be granted any visits, receive small packages with the press, purchase food items and basic necessities, send letters, or make telephone calls.”

Thus, under Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code, convicts placed in penal or disciplinary isolation units and punishment cells are prohibited from, *inter alia,* sending letters. In view of the prohibition in Paragraph 2 of Article 99 of the Code, laid down on correspondence between convicts detained in the places of deprivation of liberty where they are not related by marriage or close family ties, under Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code, convicts placed in penal or disciplinary isolation units and punishment cells are prohibited from sending letters to their convicted spouses or close relatives detained in the places of deprivation of liberty, as well as to other persons who are not convicts detained in the places of deprivation of liberty.

Under Items 4 and 5 of Paragraph 1 of Article 142 of the Code, for a violation of the requirements of the regime for serving punishment, convicts of open colonies and correctional houses may incur such penalties as their confinement in a penal isolation unit for up to fifteen days, minor convicts—confinement in a disciplinary isolation unit for up to ten days, and convicts detained in prisons—confinement in a punishment cell for up to fifteen days. Under Paragraph 1 (wording of 21 April 2005) of Article 143 of the Code, the penalties provided for in Paragraph 1 of Article 142 of the Code may be imposed by a resolution or an order of an authorised official.

While interpreting the legal regulation established in Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code in conjunction with the legal regulation established in Items 4 and 5 of Paragraph 1 of Article 142 and Paragraph 1 (wording of 21 April 2005) of Article 143 of the Code, it should be noted that:

– the limitation, established in Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code, on the right to correspondence with regard to convicts placed in penal or disciplinary isolation units and punishment cells, i.e. the prohibition on sending letters, is a constituent part of the penalty (confinement in a penal isolation unit, disciplinary isolation unit, or punishment cell) applied to these convicts;

– this measure is imposed on the grounds of an individual legal act adopted by an authorised official regarding the application of the aforesaid penalty to a concrete convict;

– this measure has a temporary character.

4. In summarising the legal regulation of the Code limiting the exercise of the right to correspondence by convicts detained in the places of deprivation of liberty, it should be noted that:

– Paragraph 2 of Article 99 of the Code, which is impugned by the petitioner, lays down the general prohibition, i.e. without taking account of any circumstances, on correspondence between convicts detained in the places of deprivation of liberty in the cases where they are not related by marriage or close family ties;

– Paragraph 5 (wording of 14 January 2010) of Article 99, Item 1 of Paragraph 1 of Article 119, and Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code establish the temporary measures limiting the right of convicts to correspondence: the screening of the letters of convicts on whom punishments of deprivation of liberty have been imposed, the temporary withholding of the sending of the outgoing letters of convicts detained in a correctional facility as well as of the delivery of the received letters to these convicts, and the temporary prohibition for convicts placed in penal or disciplinary isolation units and punishment cells on sending letters; these measures are imposed in concrete cases on the grounds of the individual legal acts adopted by the officials authorised under laws or other legal acts; in view of the prohibition in Paragraph 2 of Article 99 of the Code, laid down on correspondence between convicts detained in the places of deprivation of liberty where they are not related by marriage or close family ties, the aforesaid measures are applied to the correspondence of convicts detained in the places of deprivation of liberty with their convicted spouses or close relatives detained in the same places of deprivation of liberty, as well as with all other persons who are not convicts detained in the places of deprivation of liberty.

5. It has been mentioned that the petitioner requests an investigation into the compliance of Paragraph 2 of Article 99 of the Code with Paragraph 2 of Article 22 of the Constitution and the constitutional principle of a state under the rule of law.

5.1. Article 22 of the Constitution, *inter alia,* prescribes: “The private life of a human being shall be inviolable” (Paragraph 1); “Personal correspondence, telephone conversations, telegraph messages, and other communications shall be inviolable” (Paragraph 2).

In this context, it should be noted that personal correspondence, the inviolability of which is protected under the Constitution, is an important form of maintaining social relations. Under Paragraph 2 of Article 22 of the Constitution, the right to the inviolability of correspondence is equally protected with regard to persons whose freedom has been restricted on the grounds and under the procedure provided for by law. However, the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, is not absolute.

5.1.1. The Constitutional Court, *inter alia,* while interpreting Paragraph 2 of Article 22 of the Constitution, has noted that the legal concept of private life is linked with the legitimate expectations of the private life of a person; if persons commit criminal deeds or those contrary to law, violate the interests protected by law, inflict damage on particular persons, society, or the state, they are aware, or must and can be aware, of the fact that this will lead to the respective reaction of state institutions and that, for a breach of law being committed (or one already committed), the state may apply coercive measures, through which a certain influence will be exerted on their behaviour; persons who have committed criminal deeds must not and may not expect that their private life will be protected in a manner equal to that of persons who do not violate laws (the Constitutional Court’s ruling of 24 March 2003).

Under the Constitution, the freedom of persons who have committed crimes may be restricted on the grounds and under the procedure established by laws; upon the restriction of the freedom of such persons, their rights and freedoms may be limited, including the inviolability of correspondence (the Constitutional Court’s ruling of 24 March 2003).

5.1.2. When establishing a legal regulation limiting the human rights and freedoms, as well as the right to the inviolability of correspondence, of persons sentenced to deprivation of liberty, the legislature is bound by the Constitution; according to the Constitution, the right of convicts to the inviolability of correspondence may be limited only by means of a law specifying the grounds and procedure for this limitation (the Constitutional Court’s ruling of 24 March 2003). The said limitation must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective; to achieve this objective, such measures may be established that would be sufficient and would limit the rights of the person not more than it is necessary (the Constitutional Court’s rulings of 6 December 2000, 2 October 2001, and 24 March 2003). The Constitutional Court has emphasised that the protection of common interests in a democratic state under the rule of law may not deny any concrete human right or freedom in general and that the established and applied restrictions may not violate the essence of any particular human right (the Constitutional Court’s rulings of 9 December 1998 and 24 March 2003).

5.2. The Constitutional Court has held that the constitutional principle of a state under the rule of law is a universal principle upon which the entire legal system of Lithuania and the Constitution itself are based. The constitutional principle of a state under the rule of law is especially capacious and it comprises a wide range of various interrelated imperatives.

The Constitutional Court has held on more than one occasion that the principle of a state under the rule of law, which is consolidated in the Constitution, in addition to other requirements, also implies that human rights and freedoms must be ensured *(inter alia,* the Constitutional Court’s rulings of 23 February 2000, 22 December 2010, 16 May 2013, 9 October 2013, and 14 April 2014).

The Constitutional Court has held in its acts on more than one occasion that one of the elements of the constitutional principle of a state under the rule of law is the constitutional principle of proportionality, which means that the measures provided for in a law must be in line with the legitimate objectives that are important to society, that these measures must be necessary in order to reach the said objectives, and that these measures must not restrain the rights and freedoms of a person clearly more than necessary in order to reach the said objectives *(inter alia,* the Constitutional Court’s rulings of 11 December 2009, 15 February 2013, 16 May 2013, 9 October 2013, and 14 April 2014).

The requirement that a law, while complying with the constitutional principle of proportionality, must not limit the rights and freedoms of a person more than necessary in order to reach the legitimate objectives that are important to society, *inter alia,* implies the requirement for the legislature to establish a legal regulation that would create preconditions for the sufficient individualisation of the limitations set on the rights and freedoms of a person: a legal regulation limiting the rights and freedoms of a person under the respective law must be such that would create preconditions for assessing, to the extent possible, an individual position of each person and, in view of all the important circumstances, for individualising accordingly the specific measures that are applicable to and limit the rights of a given person (the Constitutional Court’s rulings of 7 July 2011 and 14 April 2014).

5.3. Thus, as mentioned before, the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, is not absolute; the right of convicts to the inviolability of correspondence may be limited only by means of a law specifying the grounds and procedure for this limitation; the said limitation must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective.

5.4. In the context of the constitutional justice case at issue, it should be noted that, under the Constitution, *inter alia,* the constitutional principle of a state under the rule of law, where necessary for the purposes of achieving a legitimate and universally important objective, a respective law may provide for certain limitations on the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, *inter alia,* the limitations on the right of convicts to correspondence; the requirement arises for the legislature to establish such a legal regulation that would create preconditions for the sufficient individualisation of the limitations on the right of convicts in question, after assessing their individual situation and other important circumstances.

6. In this context it should be noted that Article 8 “Right to Respect for Private and Family Life” of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as the Convention) consolidates, *inter alia,* that everyone has the right to respect for their private and family life, as well as for the privacy of their correspondence. Paragraph 2 of this article prescribes: “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The European Court of Human Rights, while interpreting the right to the privacy of correspondence, as consolidated in Article 8 of the Convention, has formulated the following provisions, which are related to the limitation of this right and are relevant to the constitutional justice case at issue:

– an interference with the privacy of correspondence does not breach the Convention if it is “in accordance with the law” and is necessary in a democratic society in order to achieve one or more of the legitimate aims contemplated in Paragraph 2 of Article 8 (the judgment of 24 February 2005 in the case *Jankauskas v. Lithuania,* application No. 59304/00; the judgment of 16 November 2006 in the case *Čiapas v. Lithuania,* application No. 4902/02; the judgment of 18 November 2008 in the case *Savenkovas v. Lithuania,* application No. 871/02; etc.);

– in view of the pursued legitimate aim, certain forms of censorship applicable to the correspondence of convicts, such as sporadic screening (with the exception of letters related to judicial consideration matters under the domestic or Convention law), may be called for and may not of themselves be incompatible with the Convention (the judgment of 25 March 1983 in the case *Silver and Others v. the United Kingdom,* application Nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, [7136/75](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C); see also, *a contrario,* the judgment of 24 February 2005 in the case *Jankauskas v. Lithuania,* application No. 59304/00; the judgment of 9 January 2007 in the case *Puzinas (2) v. Lithuania,* application No. 63767/00);

– in determining the necessity of the interference, such grounds as, e.g., a threat that the person will escape, hide, or attempt to influence the court may be regarded as sufficient to justify the pre-trial custody (detention) of that person or even the screening of part of the letters of that person, e.g., to justify the control over the correspondence between that person and some dangerous persons (the judgment of 25 March 1983 in the case *Silver and Others v. the United Kingdom,* application Nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, [7136/75](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C); see also, *a contrario,* the judgment of 24 February 2005 in the case *Jankauskas v. Lithuania,* application No. 59304/00);

– certain forms of censorship of some letters to or from the acquaintances of a convict—especially his/her correspondence with previous convicts or persons of dangerous character—may be justified where they pursue the legitimate aim of protecting the witnesses or victims in the criminal cases; the censorship of other private correspondence—including that with his wife—may also be justified, but it requires a more specific justification *(mutatis mutandis* the judgment of 25 March 1983 in the case *Silver and Others v. the United Kingdom,* application Nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75);

– the decision not to send the letters of the imprisoned persons, as well as the control over their correspondence, amounts to an interference with the right to respect for their correspondence within the meaning of Article 8 of the Convention (the judgment of 11 January 2011 in the case *Mehmet Nuri Ozen and Others v. Turkey,* application Nos. [15672/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [24462/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [27559/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [28302/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [28312/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [34823/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [40738/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [41124/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [43197/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [51938/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C), [58170/08](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#%7B%5C)).

While summarising the aforementioned provisions of the jurisprudence of the European Court of Human Rights, it should be noted that, under the Convention, the right of convicts to correspondence between themselves may be limited provided that such a limitation is established by law, pursues certain legitimate aims, and constitutes a necessary and proportionate measure in a democratic society to reach the said legitimate aims. Thus, under the case law of the European Court of Human Rights, the states are not, in principle, precluded from exercising control over or, in certain cases, even prohibiting the right of convicts to correspondence; however, any measures taken (e.g., sporadic screening or censorship of the letters of convicts or prohibition of their correspondence with certain persons, etc.) must be provided for by law, must pursue the legitimate aims referred to in Paragraph 2 of Article 8 of the Convention, and, in each particular case, a decision must be made as to their necessity and proportionality in terms of the pursued legitimate aims.

7. In this context, it should be mentioned that, on 11 January 2006, the Committee of Ministers of the Council of Europe adopted Recommendation No. (2006)2 “On the European Prison Rules”, addressed to member states. Paragraph 24.1 of the rules set out in the appendix to this recommendation, *inter alia,* prescribes that “[p]risoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations”; according to Paragraph 24.2. of these rules, *inter alia,* prisoner communication may be subject to restrictions necessary for criminal investigations, maintenance of good order, safety and security, prevention of criminal offences, and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, must allow an acceptable minimum level of contact.

8. In the context of the constitutional justice case at issue, it should be mentioned that the prohibition on correspondence between convicts who are not spouses or close relatives was also analysed in the case law of the Constitutional Court of the Republic of Latvia.

The Constitutional Court of the Republic of Latvia, having assessed the compliance of Section 49 (2) of the Law “Amendments to the Sentence Execution Code of Latvia”, adopted by the Saeima of the Republic of Latvia on 11 November 2004, with the Constitution, insofar as that paragraph prescribed that “correspondence between convicted persons in places of deprivation of liberty shall be prohibited, unless they are relatives or spouses”, declared the said provision anti-constitutional (the judgment of the Constitutional Court of the Republic of Latvia of 18 December 2009 in case No. 01-10-2009).

The Constitutional Court of the Republic of Latvia held that correspondence is one of the possibilities to have private life; if convicted persons are prohibited to have correspondence, they are also denied the possibility of forming and maintaining social relations with other persons; correspondence between convicted persons who are not spouses or close relatives could serve as an element of resocialisation, especially in cases where a convicted person does not have other persons in liberty with whom he/she could have correspondence; the aim of resocialisation is not the restriction of mutual contacts of convicted persons, provided that these contacts do not threaten the aims of penalty execution; control over correspondence can be regarded as a sufficiently effective measure to protect society from crime, provided that a reasonable balance between the security of society and the necessity to reintegrate convicted persons into society is observed; the rights of a person would be restricted at a lesser extent if the given regulation allowed assessing the impact of the correspondence of a convicted person on the security of society and on the security and order of the place of deprivation of liberty, also if it allowed determining whether the particular correspondence infringes the aims of penalty execution, and if each particular situation and particular circumstances could be examined individually. In view of that, the Constitutional Court of the Republic of Latvia drew the conclusion that the contested legal regulation, insofar as the prohibition laid down on correspondence between convicts was not individualised according to the criteria established by laws, was not indispensable from the social point of view, since in order to ensure the security of society, more lenient measures, limiting the right of a person to private life to a lesser extent, could have been established.

9. As mentioned before, in the constitutional justice case at issue, the Constitutional Court is investigating whether Paragraph 2 of Article 99 of the Code, insofar as it establishes the legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties, is not in conflict with Paragraph 2 of Article 22 of the Constitution and the constitutional principle of a state under the rule of law.

The doubt of the petitioner regarding the compliance of the legal regulation in question with the Constitution is substantiated by the argument that the impugned legal regulation provides for the prohibition limiting the rights and freedoms of a person more than necessary, since the legitimate and universally important objectives pursued through this prohibition could be achieved by means of less restrictive measures.

9.1. In this ruling, the following has been mentioned:

– the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, is not absolute; the right of convicts to the inviolability of correspondence may be limited only by means of a law specifying the grounds and procedure for this limitation; the limitation in question must be such that would result in a reasonable relationship between the chosen measures and the pursued legitimate and universally important objective;

– under the Constitution, *inter alia,* the constitutional principle of a state under the rule of law, where necessary for the purposes of achieving a legitimate and universally important objective, a respective law may provide for certain limitations on the right of a person to the inviolability of correspondence, which is consolidated in Paragraph 2 of Article 22 of the Constitution, *inter alia,* limitations on the right of convicts to correspondence; the requirement arises for the legislature to establish such a legal regulation that would create preconditions for the sufficient individualisation of the limitations on this right of convicts, once the individual situation of convicts and other important circumstances are assessed.

9.2. It has also been mentioned that Paragraph 2 of Article 99 of the Code, the compliance of which with the Constitution is impugned by the petitioner, lays down the general prohibition, i.e. without taking account of any circumstances, on correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties.

Thus, through the legal regulation in question, convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties are prohibited from corresponding between themselves, irrespective of whether, due to such correspondence, there could arise any threat to the security of society, the internal order of the pre-trial detention, arrest, and correctional facilities, or the rights and freedoms of other persons, or any other significant circumstances. Consequently, this legal regulation, as established in Paragraph 2 of Article 99 of the Code, does not create preconditions for the sufficient individualisation of the limitations on the right to correspondence, once the individual situation of a convict and other important circumstances are assessed; therefore, this legal regulation should be judged as limiting the right to correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities more than necessary in order to achieve the pursued legitimate and universally important objectives.

9.3. In the light of the foregoing arguments, the conclusion should be drawn that Paragraph 2 of Article 99 of the Code, insofar as it establishes the legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties, is in conflict with Paragraph 2 of Article 22 of the Constitution and the constitutional principle of a state under the rule of law.

10. In this context, it should be noted that, as mentioned before, Paragraph 5 (wording of 14 January 2010) of Article 99, Item 1 of Paragraph 1 of Article 119, and Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code establish the temporary measures limiting the right of convicts to correspondence: the screening of the letters of convicts on whom punishments of the deprivation of liberty have been imposed, the temporary withholding of the outgoing letters of convicts held in a correctional facility as well as of the delivery of the received letters to these convicts, and the temporary prohibition for convicts placed in penal or disciplinary isolation units and punishment cells on sending letters; these measures are imposed in concrete cases on the grounds of the individual legal acts adopted by the officials authorised under laws or other legal acts. Upon the entry into force of this Constitutional Court’s ruling, recognising that Paragraph 2 of Article 99 of the Code is in conflict with the Constitution, insofar as this paragraph establishes the legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties, the measures limiting the right of convicts to correspondence as provided for in Paragraph 5 (wording of 14 January 2010) of Article 99, Item 1 of Paragraph 1 of Article 119, and Paragraph 1 (wording of 14 January 2010) of Article 146 of the Code, may also apply to correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities.

It should also be noted that, where necessary, the legislature may also provide for other measures limiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities (for example, the temporal withholding of the outgoing letters of or the delivery of the received letters to concrete persons*,* the temporal prohibition on correspondence with concrete persons), which would be less restrictive than the general prohibition, laid down in Paragraph 2 of Article 99 of the Code, on correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties. As mentioned before, under the Constitution, a legal regulation limiting the right of convicts to correspondence, *inter alia,* must be such that would create preconditions for the sufficient individualisation of the limitations on this right of convicts, once the individual situation of convicts and other important circumstances are assessed.

Conforming to Articles 102 and 105 of the Constitution of the Republic of Lithuania and Articles 1, 53, 531, 54, 55, and 56 of the Law on the Constitutional Court of the Republic of Lithuania, the Constitutional Court of the Republic of Lithuania gives the following

**ruling:**

To recognise that Paragraph 2 of Article 99 of the Code of the Enforcement of Punishments of the Republic of Lithuania (Official Gazette *Valstybės žinios,* 2002, No. 73-3084, insofar as it establishes the legal regulation prohibiting correspondence between convicts detained in pre-trial detention, arrest, and correctional facilities in the cases where they are not related by marriage or close family ties, is in conflict with Paragraph 2 of Article 22 of the Constitution of the Republic of Lithuania and the constitutional principle of a state under the rule of law.

This ruling of the Constitutional Court is final and not subject to appeal.

Justices of the Constitutional Court:       Elvyra Baltutytė

                                                          Vytautas Greičius

                                                          Danutė Jočienė

                                                          Gediminas Mesonis

                                                          Vytas Milius

                                                          Egidijus Šileikis

                                                          Algirdas Taminskas

                                                          Dainius Žalimas