



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia

in Case No. 2013-18-01

10 June 2014, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Kristīne Krūma, Gunārs Kusiņš, Uldis Ķinis and Sanita Osipova,

having regard to a constitutional complaint submitted by Mārtiņš Ēcis,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16 and Para 11 of Section 17(1), as well as Section 19² and Section 28¹ of the Constitutional Court Law,

at the court sitting of 16 May 2014 examined in written procedure case

“On the Compliance of the Sixth Sentence of Section 56³ (3) of the Sentence Execution Code of Latvia with the first sentence of Article 92 of the Satversme of the Republic of Latvia.”

The Facts

1. On 16 June 2011 the Saeima of the Republic of Latvia adopted amendments to the Sentence Execution Code of Latvia (hereinafter – the Code), which regulated the procedure for employing convicted persons. These amendments, *inter alia*, added to the Code Section 56³ (3), which set out the procedure according to which a convicted person could receive a permission to be employed for remuneration, as well as established a person’s right to appeal against the decision adopted by the prison governor before the Prison Administration. The sixth sentence of Section 56³ (3) (hereinafter – the contested norm) provides: ”The decision of the Latvian Prison Administration is not subject to appeal.”

2. **The applicant – Mārtiņš Ēcis** – requests the Constitutional Court to examine the compatibility of the contested norm with the first sentence of Article 92 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant notes that he is serving a conviction at the Riga Central Prison – at a partly-closed prison, on the highest level of regime. Allegedly, on the basis of Section 56⁵ (2) of the Code he had requested the prison governor a permission to work outside the prison, but was not granted such permission. The Applicant appealed against the prison governor’s unfavourable decisions to the Prison Administration (hereinafter – the Administration), which left the decision of 29 September 2011 by the prison governor unchanged. The Applicant appealed against the decision by the Administration before the Administrative District Court, which on the basis of the contested norm on 19 June 2013 terminated legal proceedings in the case.

Allegedly, Article 92 of the Satversme guarantees the right to defend at a fair court only “rights and lawful interests”. The issue of the right of convicted persons to be employed allegedly pertains to the rights and lawful interests following from Article 106 of the Satversme. Convicted persons are said to retain their fundamental rights to the extent the circumstances of prison and the regime for

serving the sentence allow it. Convicted persons, who are in labour law relationships in a prison as to their fundamental rights should be equalled to persons, who are employed in accordance with the general labour law regulation.

Allegedly, Article 92 of the Satversme guarantees to everyone the right to have the legality of the actions of the public administration examined by an administrative court. However, the contested norm, allegedly deprives the Applicant of this right. Even though the right to a fair court may be restricted, it cannot be denied substantially. Hence, the restriction established by the contested norm should be recognised as being disproportional.

It is alleged that the restriction to fundamental right established by the contested norm has no legitimate aim. An absolute restriction on the right to a fair court is said not to be aimed at the protection of the democratic order of the State, since a judicial state is unconceivable without a judicial control over the actions of the executive power. The measure chosen by the legislator allegedly is not aimed at guaranteeing public security, since the employment of convicted persons is very important in the process of re-socialising them. Likewise, neither is the public welfare protected, since by improving the welfare of individual convicts the welfare of the society in general is being improved.

The restriction upon the right to a fair court could be considered as being proportional only if a stable case law had developed in the particular field and no doubts could arise with regard to the correct application of legal norms. However, allegedly, this does not apply to the concrete situation, since a case law on this issue has not evolved at all. With regard to the fundamental rights guaranteed in Article 92 of the Satversme the State is said to have a positive obligation to envisage a regulation, in accordance with which the dispute would be heard by court on its merits at least in one instance, i.e., examining both the actual and legal aspects of it. It is said that the contested norm denied this right and therefore was incompatible with the first sentence of Article 92 of the Satversme.

3. The institution, which adopted the contested act, – the Saeima of the Republic of Latvia – does not uphold the opinion expressed by the Applicant and

is of the opinion that the contested norm complies with the first sentence of Article 92 of the Satversme.

3.1. The Saeima notes that the right to a fair court is not absolute. The limits of a judicial control with regard to those decisions, which an institution has adopted with regard to persons that are specially subordinate to them, are defined by the third sentence of Section 1 (3) of the Administrative Procedure Law (hereinafter – APL). In the meaning of APL convicted persons are to be considered as being specially subordinate persons. This, in turn, means that the decisions adopted with regard to these persons are to be recognised as internal decisions of an institution adopted with the aim to ensure the functioning of the particular institution of public administration and managing the persons specially subordinate to the institution. Likewise, Section 31(2) of APL sets the prerequisite for a private person to submit an application to an administrative court that the particular actions of the executive power had violated the rights or lawful interests of this private person. It is said that the aforementioned norm specifies the content of the first sentence in Article 92 of the Satversme. This means that a person can turn to court to request the protection of the rights that follow from the provisions of substantive law.

The Applicant has pointed to the violation of rights and lawful interests guaranteed by Article 106 of the Satversme. The Saeima holds that the fundamental rights set out in the Satversme are applicable to a convicted person only insofar they are not restricted and are compatible with the purpose of serving the sentence and the prison regime. The restriction upon a person's fundamental rights in prisons are said to follow from the necessary and inevitable consequences of imprisonment or the link between the restriction and the situation of the particular convict. The right to freely choose employment, guaranteed in the first sentence of Article 106 of the Satversme, with regard to convicted persons should be examined by taking into consideration the re-socialisation of convicted persons and the importance of employment in this process. The Saeima doubts, whether the right guaranteed in the first sentence of Article 106 of the Satversme could be interpreted as meaning that a convicted person would have the right to demand an

employment to his or her own liking or to freely choose any employment, ignoring the prison regime and the aims of re-socialisation.

The Applicant, allegedly, has misunderstood the essence of Section 56⁵ (2) of the Code, since its purpose is not linked with establishing labour law relationships between convicts and employers outside the prison, but with the possibility to employ a convict in maintenance works outside the institutions for deprivation of liberty, for example, cleaning the territory belonging to the prison. The convicted persons do not have the subjective right to request permission to work outside the prison territory in a job freely chosen by them.

Therefore the prohibition to convicted persons to freely choose a workplace follows from the regime of sentence execution, and the fundamental rights envisaged by Article 106 of the Satversme cannot be directly applicable to convicts. Accordingly, the decision by the Administration cannot be considered to be an administrative act and Article 92 of the Satversme does not require ensuring a possibility to appeal against this decision, as in this case a person's rights and lawful interests are said to be unaffected.

3.2. However, the Saeima notes that if the Constitutional Court would consider that the proportionality of the restriction upon the fundamental rights set out in the first sentence of Article 92 of the Satversme should be examined, then the contested norm should be examined in a uniform system with other amendments of 16 June 2011 to the Code. These amendments had been introduced to establish a new model for employing convicted persons. Thus, this regulation as a whole is aimed at ensuring to convicted persons the right to employment and re-socialisation during the period of serving their sentence. At the same time the contested norm also is aimed at reducing the number of applications by persons specially subordinate to an institution to the administrative court and, thus, at decreasing the workload of court system. Relieving administrative courts and increasing the effectiveness of the administrative procedure allows ensuring the rights of other persons to defend their rights at a fair court within reasonable time. Thus, the contested norm is said to have a legitimate aim, i.e., it ensures other persons' rights to a fair court and envisages an effective model for employing sentenced persons.

The contested norm is said to be appropriate for reaching the legitimate aim, since it clearly states that turning to court regarding the Administration's decision, which is adopted after examining the decision by the prison governor regarding issuing an order on employing a convict is inadmissible.

The prison governor, in deciding on granting the permission to employ a convict outside the facility for deprivation of liberty, is obliged, before granting the permission, to assess the regime for serving the sentence set for the convict (for example, whether the regime for serving the sentence set for the convicted person allows being in the particular workplace), as well as to assess, whether the granting of such a permission would influence the security of the facility for the deprivation of liberty, of other convicted persons and the society in general. The first sentence of Article 92 of the Satversme does not mean that a person is guaranteed the right to have any issue that is of importance for him or her adjudicated by court. In such cases an alternative procedure should be ensured to the person, this procedure should be well-considered and give the person the right to defend his or her rights on as high level as possible. In some cases ensuring procedural guarantees in the appeal stage is sufficient to make the regulation compatible with the first sentence of Article 92 of the Satversme. The mechanism of appeal included in Section 56³ (3) of the Code, in compliance with the principles of the administrative procedure, ensures to a person sufficient possibilities for legal protection.

3.3. In addition to the aforementioned the Saeima notes that the contested norm establishes a precise and clearly defined prohibition to appeal against the Administration's decision. Thus, application of the contested norm is not needed, i.e., it directly infringes upon a person's fundamental rights. The Administration adopted the decision with regard to the Applicant on 29 September 2011. In the case under review it should be considered, whether the Applicant abided by the provisions set out in the second sentence of Section 19² (4) of the Constitutional Court Law, i.e., has submitted the constitutional complaint within the procedural term of six months established for it. The fact that the person erroneously had submitted an application to the Administrative District Court allegedly does not influence the calculation of the procedural term established by the Constitutional

Court Law. The fact that a person has turned to another institution of law enforcement, not to the Constitutional Court allegedly cannot be considered as being a justified reason for exceeding the time limit set for submitting a constitutional complaint.

4. The summoned person – the Ministry of Justice – holds that the contested norm complies with the first sentence of Article 92 of the Satversme and upholds the arguments stated in the written reply by the Saeima, *inter alia*, that the aim of the contested norm is to decrease the number of applications to administrative court submitted by persons specially subordinate to an institution and thus relieve the court system. Faster and more effective hearing of disputes should be considered to be a legitimate aim for restricting the fundamental rights.

Allegedly Section 56³ (3) of the Code envisages that the refusal to grant a permission should be reasoned. Whereas Para 4 of Part I in the annotation to the law of 16 June 2011 “Amendments to the Sentence Execution Code of Latvia” notes that the aim of order granted by the prison governor is, after the assessment of security considerations, as well as the regime for serving the sentence set for the convicted person, to ensure the necessary control over freedom of movement of the convict inside and outside the prison. Thus, the prison governor prior to issuing an order assesses, whether the employment of the convict in the concrete workplace is admissible both with regard to the sentence execution regime and the aspect of security, but the convicted person may contest the refusal to issue an order by turning to the head of the Administration. Thus, the control over the legality of actions within the institution is ensured.

Sub-para 4.2 of the Cabinet Regulation of 1 November 2005 No.827 “Regulation of the Prison Administration” provides that the Administration monitors and ensures the way behaviour norms and rights of convicted persons are ensured, as well as the fulfilment of obligations. Hence, the head of the Administration has the obligation to ensure the legality of actions of the Administration and its structural units, *inter alia*, those of prisons. Therefore the fact that a convict can appeal against an order connected to his employment to the Administration ensures control over the legality of actions taken by the prison.

The Ministry of Justice also underscores that the contested norm applies to persons specially subordinate to an institution. These persons must submit to various restrictions to a larger extent than ordinarily, and they have been imposed special legal obligations. Therefore the legislator has been granted broad discretion in creating and improving an effective system for re-socialisation. Therefore the refusal to issue an order regarding the employment of a convicted person for remuneration cannot significantly infringe upon the rights of a person specially subordinate to the institution.

Allegedly, the regulatory enactments that regulate detention and execution of sentences do not clearly differentiate between decisions, which are and which are not subject to appeal. Therefore the number of complaints received from the facilities for deprivation of liberty is exceedingly large and the terms for hearing these at courts – disproportionately long. The Ministry of Justice, following an assessment of the situation, elaborated amendments to regulatory enactments to make the procedure for executing criminal sentences and detention more effective.

5. The summoned person – the Prison Administration – holds that the contested norm complies with the first sentence of Article 92 of the Satversme.

The Administration notes that the legislator, in delegating the right envisaged in Section 56⁵ (2) of the Code to the prison governor, had the aim to ensure comprehensive fulfilment of the functions defined for an institution of deprivation or liberty, not to grant to convicted persons the right to freely conclude employment agreements with employers outside the institutions for deprivation of liberty, while being in a closed or partly-closed prison. Moreover, regulatory enactments do not envisage the right to convicted persons, who are serving their sentence in a closed or partly-closed prison with the highest level of regime, the right to be employed outside the facility for deprivation of liberty at all.

The Applicant had the obligation to exhaust all available general legal remedies before turning to the Constitutional Court. He could have appealed against the decision by the Administrative District Court on terminating legal proceedings by submitting an auxiliary complaint to the Senate of the Supreme

Court. However, the Applicant had missed the term for submitting the auxiliary complaint, and the Senate had recognised the missing of the procedural term as being unjustified. Thus, the Applicant had not used all possibilities for defending his fundamental rights by general legal remedies and the legal proceedings in this case should be terminated.

6. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – notes that the contested norm is incompatible with Article 92 of the Satversme. The aim of the penal law in Latvia is to achieve re-socialisation of convicted persons. Therefore employment of convicted persons is a significant element in the process of re-socialising them. The legislator should be granted broad discretion in establishing and improving an effective system of re-socialisation; however, this discretion is not unlimited. It should be exercised only to the extent that it is necessary in order to establish an effective system for serving the sentence and for re-socialisation, i.e., the legislator may not create preconditions for unsubstantiated infringements upon the rights of convicted persons.

The order by the prison governor, envisaged by the contested norm, could be assessed from two points of view. First, as a permission to a person specially subordinate to an institution to be present in a particular place during working hours on the basis of a concluded agreement or labour contract. In such a case the disputes regarding legal relationships, which are established on the basis of an agreement, in accordance with Section 56¹² of the Code must be examined in accordance with the procedure established by the Civil Procedure Law. Thus, in the particular case, an access to court is ensured to the convicted person in accordance with Article 92 of the Satversme.

Secondly, the prison governor may issue the order envisaged by the contested norm, on refusing to employ the convicted person, irrespectively of the fact, whether he has concluded a labour contract or an agreement. The Ombudsman expresses the opinion that in this case the order by the head of the institution for deprivation of liberty is an obstacle to employing a convicted person. In the concrete situation the restriction established by the contested norm

directly influences the legal relationship between the employer and the convicted person.

Thus, the restriction established by the last sentence of Section 56³ (3) of the Code, to the extent it applies to those situations, when the order by the head of the institution for deprivation of liberty has been issued after an employment contract or agreement has been concluded, allegedly denies access to court and is incompatible with Article 92 of the Satversme.

7. The summoned person – Mg. iur. Ilona Kronberga, lecturer at the Faculty of Law, University of Latvia – notes that the contested norm complies with Article 92 of the Satversme. Pursuant to APL Section 1(3), a person sentenced to deprivation of liberty at the time when the sentence is executed is to be considered as person specially subordinate to an institution, and an internal decision by the institution, which affects only the institution and a person specially subordinate to it, in this case – the Applicant, should not be considered as being an administrative act and should not be reviewed by an Administrative Court. The contested norm establishes the procedure for appealing against a decision to a higher institution and does not prohibit the Applicant from turning to court to defend his lawful interests on other occasions. Thus, the contested norm does not deny exercising the rights envisaged by Article 92 of the Satversme.

The third part of Section 56³ of the Code should be interpreted in interconnection with the second part of Section 56⁵. It follows from these norms that the head of the institution for deprivation of liberty has the right to issue a written permission for employing a convicted person outside the prison territory; however, the law does not impose an obligation to issue such an order either upon the prison governor, or the Administration.

This procedure had been envisaged to ensure that the criminal sanctions established by the Code were enforced and the basic principles of a sentence of deprivation of liberty were ensured; namely, the procedure for enforcing a sentence and re-socialisation of convicted persons. Employment of convicted persons is one of the measures of social rehabilitation, which is applied to the convicted persons in a form that complies with the terms of regime and security

needs. Thus, the rights envisaged by the first sentence of Article 106 of the Satversme are to be applied to persons, who have been sentenced to deprivation of liberty, with the restrictions that follow from the nature of the sentence execution regime.

8. The summoned person – Dr. iur. Jautrīte Briede, professor at the Faculty of Law, the University of Latvia – holds that the contested norm complies with Article 92 of the Satversme. The contested norm envisages an absolute prohibition to turn to administrative court regarding the decisions on employing convicted persons adopted by the Administration. I.e., an administrative court cannot examine as to merits the issue of employing convicted persons. Neither can an administrative court decide on administrative violations, if such had been made in the process of issuing such a decisions, because, of the basic decision cannot be examined by court, then also the issue of violations made in the process of adopting it, cannot be examined by court.

The decisions by the prison governor and the Administration are said not be administrative acts, but decisions addressed to a specially subordinate person. A decision, which is addressed to a person specially subordinate to an institution, should be considered as being an administrative act only if it significantly restricts human rights. The catalogue of human rights of sentenced persons does not comprise the right to work. Therefore the right to freely choose employment and workplace envisaged by Article 106 of the Satversme may not be attributed to sentenced persons and, thus, the rights and lawful interests of a sentenced person in the meaning of the first sentence of Article 92 of the Satversme are not affected. The decisions that are addressed to a convicted person but do affect his or her human rights are internal decisions, which are not subject to the control by an administrative court.

The Findings

9. The Saeima holds that in the case under review there are doubts with regard to complying with the term set for submitting a constitutional complaint.

Allegedly the Applicant did not have general legal remedies; therefore the term for submitting the constitutional complaint should be counted from the moment when the Administration adopted its decision, i.e., from 29 September 2011. Allegedly, the Applicant, in submitting the constitutional complaint, did not comply with the term stipulated in Section 19² (4) of the Constitutional Court Law (*see Case Materials, p. 67*).

Whereas the Administration notes that it had been possible to appeal against the decision by the Administrative District Court that was unfavourable for the Applicant before the Supreme Court. However, the Applicant, in applying to the Supreme Court, had missed the term for submitting an application and this delay had been recognised as being unjustifiable. Thus, the Applicant did not exhaust the general legal remedies in the understanding of Section 19² (2) of the Constitutional Court Law (*see Case Materials, p. 93*).

The Saeima and the Administration have pointed to circumstances that are essential in deciding, whether to continue or to terminate legal proceedings, and substantially are to be considered as a procedural request to terminate legal proceedings on the basis of Para 3 of Section 29(2) of the Constitutional Court Law.

The Constitutional Court has recognised in its case law that issues of procedural nature regarding termination of legal proceedings usually are to be examined before assessing the constitutionality of the norm, insofar it is not necessary to assess some aspects of the case on their merits (*see, for example, Judgement of 19 October 2011 by the Constitutional Court in Case No. 2010-71-01, Para 11, or Judgement of 27 June 2013 in Case No. 2012-22-0103, Para 10*).

Section 29 of the Constitutional Court Law regulates termination of legal proceedings. The first part of this Section defines those cases, when legal proceedings in a case may be terminated before a judgement is pronounced by the decision of the Constitutional Court. However, these norms envisage the right of the Constitutional Court to terminate a case, but not the obligation to do so. If any of the circumstances referred to in the Constitutional Court Law that allow terminating a case are present, this does not mean that continuing legal proceedings in the case were not possible or necessary.

Thus, first of all it must be verified, whether grounds for terminating legal proceedings exist, and if it exists, whether no circumstances exist that require that legal proceedings were continued. It is noted in the decision of 6 November 2013 by the 1st Panel of the Constitutional Court: it follows from the application and the documents annexed to it that no general legal remedies exist for the protection of the Applicant's fundamental rights, since the potential restriction of fundamental rights follows directly from the contested norm. The Applicant, however, has decided to turn to court to defend his fundamental rights. The Administrative District Court accepted M.Ēcis' application for hearing; however, it decided to terminate legal proceedings. Hence, it can be considered that the Applicant has exhausted all possibilities to defend his fundamental rights by legal remedies and has complied with the term for submitting the application (*see Decision of 6 November 2013 by the 1st Panel of the Constitutional Court on initiating a case having regard to application No. 195/2013, Para 6*).

This finding by the Panel is based upon the presumption that in a situation, where a legal norm envisages a clear and unambiguous prohibition to appeal against a decision at court, a person has no legal remedies. However, the Administrative District Court accepted the case for hearing, thus, the Applicant could feel certain that the court acted lawfully. Hence, in assessing, whether the term for submitting an application to the Constitutional Court was complied with, it should be calculated from the date, on which the Administrative District Court adopted a decision on terminating legal proceedings. Thus, the Applicant has complied with the term of six months envisaged in Section 19² (4) of the Constitutional Court Law.

The Constitutional Court cannot uphold the Administration's view that the legal proceedings should be terminated because the Applicant has not used the possibility to appeal against the decision by the Administrative District Court on terminating legal proceedings before the Supreme Court because, as the Constitutional Court recognised previously, the Applicant should not have turned to the administrative court, at all because in this case there were no general legal remedies at all. Thus, the use of such remedies cannot be a pre-requisite for submitting a constitutional complaint.

Thus, in the case under review the grounds for terminating legal proceedings that are defined in Section 29(1) of the Constitutional Court Law do not exist and the legal proceedings must be continued.

10. Article 92 of the Satversme provides: “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The Constitutional Court has recognised that Article 92 of the Satversme does not mean a right to have any issue that is of important for a person adjudicated by court (*see Judgement of 6 December 2004 by the Constitutional Court in Case No. 2004-14-01, Para 8*). Article 92 of the Satversme guarantees to a person the right to defend in a fair court only “rights and lawful interests” (*see Judgement of 23 April 2003 by the Constitutional Court in Case No. 2002-20-0103, Para 1 of the Findings*).

Therefore to establish, whether the contested norm complies with Article 92 of the Satversme, it must be first of all assessed, whether the contested norm affects a person’s rights and lawful interests.

It follows from the materials of the case that the Applicant had requested a permission to be employed by an employer outside the facility for deprivation of liberty. The prison governor and the Administration did not grant the respective permission to the Applicant, but the contested norm prohibits appealing against the Administration’s decision that is unfavourable for the Applicant to court (*see Case Materials, pp. 1–2*). Whereas the Saeima expressed the opinion that convicted persons do not have the subjective right to be employed by a freely chosen employer outside the facility for deprivation of liberty, therefore the contested norm does not affect the Applicant’s rights and lawful interests. Accordingly, Article 92 of the Satversme does not require ensuring a control by a court over the legality of the Administration’s decision (*see Case Materials p. 66*).

In reviewing a case having regard to a person’s constitutional complaint, the Constitutional Court must assess the compliance with norms of higher legal force of that legal norm, which actually has infringed upon a person’s fundamental rights. Thus, in examining a case that has been initiated on the basis of a constitutional complaint, the actual circumstances of the case, under which the

contested norm violated the applicant's fundamental rights, must be granted special importance (*see Judgement of 11 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 12*).

The Administration's decision referred to in the contested norm may be adopted in different situations, depending upon the workplace, where the convicted person wishes to be employed. The Applicant has requested a permission to be employed outside the institution for deprivation of liberty. Therefore the prohibition established by the norm that is contested in the case under review to appeal against a decision by the Administration must be examined in interconnection with the content of this decision, i.e., the issue of the rights of convicted person to be employed outside prison.

Therefore, the compliance of the norm contested in the case under review with the first sentence of Article 92 of the Satversme will be examined insofar it applies to employing convicted persons outside prison.

11. First of all the contested norm must be examined in interconnection with the APL norms and the limits of judicial control defined in it. APL requires ensuring judicial control over the legality of administrative acts. Therefore in the case under review it must be established, whether the decision by the Administration regarding employment of a convicted person by an employer outside the institution for deprivation of liberty should be considered as being an administrative act. As noted by the Saeima, the legislator, in adopting the contested norm, presumed that the decision by the Administration with regard to the convicted person was an internal decision of the institution and therefore was not subject to appeal in court (*see Additional explanations by the Saeima in Case Materials, p. 112*). This presumption by the Saeima, in fact, follows from Article 1(3) of APL.

Pursuant to Para 2 of Section 1(3) of APL an internal decision of an institution, which affects only the institution itself, bodies subordinate to it or persons specially subordinate to it, is not an administrative act. However, on the other hand, the third sentence of Section 1(3) of APL also envisages that decisions regarding the establishing, alteration or termination of the legal status of a person

especially subordinate to an institution, or the disciplinary punishment of such persons, as well as other decisions if they significantly limit the human rights of persons especially subordinate to the institution may be recognised as being an administrative act. As noted by the summoned person – J. Briede, a decision addressed to a person especially subordinate to an institutions is to be considered an administrative acts only if it significantly restricts human rights (*see Opinion by J.Briede in Case Materials, p. 123*).

Hence, to assess, whether the Administration's decision on employing a convicted person is to be recognised as an administrative act, the Constitutional Court must establish, whether, firstly, it has been adopted regarding a person especially subordinate to the institution, and secondly, whether any of the circumstances referred to in the third sentence of Section 1(3) of APL are present, which would require recognising an internal decision of an institution as being an administrative act.

11.1. The institution of a person especially subordinate to an institution is characterised by the understanding that some groups of persons, *inter alia*, convicted persons come into special subordination to state institutions. To ensure the functioning of the institution, various restrictions upon rights may be imposed to the specially subordinate person (*see Maurer H. Allgemeines Verwaltungsrecht. 14. Aufl. München: Beck, 2002, S. 123, 178, and Briede J. Administratīvais akts. Rīga: Latvijas Vēstnesis, 2003, 139. lpp.*).

An institution can adopt two different types of decisions regarding a person especially subordinate to it with the aim of ensuring its operations: internal decisions or administrative acts. The decision by an institution is internal if it does not affect a person's subjective rights, – such are the majority of decisions pertaining to routine operations of an institution. Whereas a decision by the institution, which affects a persons subjective rights, is to be recognised as being an administrative act; decisions that establish, alter or terminate the legal status of a person can be mentioned as an example of such acts (*see Graf S. Das Sonderstatusverhältnis. Juristische Arbeitsblätter, Jg. 44, H.12/2012, S. 881–886*).

Para 2 of APL Section 2 envisages that one of the basic objectives of this law is to subject actions of executive power relating to specific public legal

relations between the State and a private person to the control of an independent, impartial and competent judicial power. Pursuant to this norm, all possible types of actions by the executive power aimed at a particular person in the field of public law must be subject to judicial control. I.e., both administrative acts and the actual actions by an institution, as well as administrative agreements must be subject to judicial control (*see: Levits E. 2. panta komentārs. Grām.: Administratīvā procesa likuma komentāri. A un B daļa. Briede J. (zin. red.) Rīga: Tiesu namu aģentūra, 2013, 101.–102. lpp.*). Whereas with regard to internal decisions by an institution judicial control is not envisaged because they do not affect a person's subjective right. The disputes that are related to internal decisions must be resolved in accordance with the procedure of hierarchy in public administration. In this case the Administration ensure control over the legality of the decisions adopted by the prison governor.

The Administration adopts a decisions of employing a convicted person by an employer outside the institution for deprivation of liberty regarding a convicted person, i.e., a person specially subject to the institution. Therefore the Administration's decision in the meaning of Para 2 of APL Section 1(3) is to be considered as being an internal decision of the institution, not an administrative act.

11.2. Simultaneously the Constitutional Court must assess, whether no circumstances referred to in the third sentence of APL Section 1 (3) are present, which would demand regarding an internal decision of an institution as being an administrative act.

In the case under review the Constitutional Court has no grounds to consider that the Administration's decision affected issues pertaining to establishing, altering or terminating the legal status of a person specially subordinate to the institution or imposing disciplinary punishment upon the person. Whereas to answer the question, whether the Administration's decision significantly restricts the human rights of a person specially subordinate to the institution, first of all the content of the subjective rights of this person must be analysed.

Similarly, it has been recognised also in the case law of the Administrative Department of the Supreme Court: in order to recognise a decisions by the head of

Administration regarding a convicted person as being an administrative act, a significant restriction on human rights must be established. Therefore first of all the human right, which the person considers to be violated, must be identified. Whereas, if the person substantially does not have a right, then also a significant restriction on this right cannot be identified (*see, for example, Decision of 19 February 2010 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-267/2010*).

The prohibition established by the norm that is contested in this case – to appeal against the Administration’s decision in court should be assessed in interconnection with the content of this decision, i.e., the issue of a convicted person’s right to be employed outside the institution for deprivation of liberty. Accordingly, to assess, whether the Administration’s decisions is to be regarded as an administrative acts and should be subject to control by an administrative court, first of all the content of right that follows from the norms of substantive law should be evaluated, namely, the right of convicted persons to employment. In the context of the case under review the content of this norm is more extensively revealed by Article 106 of the Satversme and the norms of the Code that regulate the procedure for employing convicted persons.

12. The first sentence of Article 106 of the Satversme provides: “Everyone has the right to freely choose their employment and workplace according to their abilities and qualifications.”

The Constitutional Court has noted that the first sentence of Article 106 of the Satversme envisages a person’s right to freely choose an employment, in view of the totality of those abilities, knowledge and skills that characterise a person’s qualification and suitability for performing a particular job, taking into consideration both education and practical experience in a particular job, as well as other knowledge, capabilities and skills that the respective person has acquired and developed (*see, for example, Judgement of 1 November 2007 by the Constitutional Court in Case No. 2007-08-01, Para 7, or Judgement of 22 November 2011 in Case No. 2011-04-01, Para 12*). The fundamental human rights established in the Satversme are applicable also to convicted persons, insofar these

fundamental rights have not been restricted and are compatible with the aim of serving the sentence and the prison regime. At an institution for deprivation of liberty restrictions on fundamental rights follow from the necessary and inevitable consequences of imprisonment, as well as the connection between the imprisonment and the situation of a particular convict (*see Judgement of 21 October 2008 by the Constitutional Court in Case No. 2008-02-01, Para 10*).

12.1. It must be taken into consideration that in institutions for deprivation of liberty the employment of convicted persons has specific aims. Work of convicts should be seen as a socially useful activity, the primary objective of which is not gaining income to provide for daily needs, but a possibility of social rehabilitation for convicted persons, so that they would not lose social and work skills. Employment of convicted persons is a positive element in the organisation of the functioning of an institution for deprivation of liberty, of training and serving the sentence, and part of the re-socialisations process of a convicted person (*see Judgement of 14 June 2007 by the Constitutional Court in Case No. 2006-31-01, Para 14.2*). As regards employment as part of a convicted person's re-socialisation process, it follows from the materials of the case that the Applicant is employed in the maintenance works at the Riga Central Prison (*see Case Materials, p. 11*).

12.2. Section 38(1) of the Criminal law defines deprivation of liberty as the compulsory imprisonment of a person. This punishment is linked with isolating the sentenced person from the previous environment, accustomed way of life, existing social contacts, as well as with the supervision of the sentenced person (*see: Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski praktiskais komentārs. 1. Vispārīgā daļa. Rīga: AFS, 2007, 138. lpp.*).

The fundamental rights that are included in Article 106 of the Satversme cannot be identically applied to persons that are free and persons that are imprisoned. Deprivation of liberty as a form of punishment envisages compulsory keeping of a person in prison, which as such points to the fact that a convicted person may not freely leave the institution for deprivation of liberty. Accordingly, the person may not freely choose a workplace outside the institution for deprivation of liberty. A situation to the contrary would not be compatible with

the aim of serving the sentence, as well as the sentence execution regime. Hence, the right included in Article 106 of the Satversme may not be interpreted in way that would be incompatible with the sentence execution regime and the aim of serving the sentence, by allowing convicted persons to freely leave the institution for deprivation of liberty.

The first sentence of Article 106 of the Satversme applies to convicted persons only insofar the exercise of this right is compatible with the regime and aim of sentence execution regime, and does not comprise the right of convicted persons to freely choose a workplace outside the institution for deprivation of liberty.

13. Regulating the procedure for executing a criminal sentence is the legislator's function, and the legislator enjoys certain discretion in fulfilling it. The eight chapter of the Code envisages also the procedure for employing convicted persons. Therefore, the Constitutional Court must establish the content of rights that follow from the particular legal regulation, as well as whether the norms of the Code define the Applicant's right to be employed outside prison.

The Applicant holds that the Code grants the right to convicted persons to be employed by an employer outside the institution for deprivation of liberty (*see Case Materials, p.1*). Whereas the Saeima and the majority of summoned persons note that the Applicant has misunderstood the meaning of Section 56⁵ (2) of the Code and that this norm does not envisage employment of convicted persons by employers outside the institution for deprivation of liberty (*see, for example, Written reply by the Saeima, Case Materials, p. 66; Explanations by the Minister of Justice, Case Materials, pp. 119–120; and Explanation by the Administration, Case Materials, pp. 92–93*).

13.1. Section 56.³ (1) of the Code provides: “If a merchant which has concluded a cooperation agreement with the deprivation of liberty institution regarding organising employment of convicted persons, seeks to employ a convicted person who is serving his or her sentence in a closed prison or a partly-closed prison, the merchant and the convicted person shall enter into an agreement (hereinafter – agreement) on the performance of work prior to commencing the

work. If a merchant seeks to employ a convicted person who is serving his or her sentence in an open prison in an enterprise located outside the territory of the prison, the merchant and the convicted person shall enter into an employment contract prior to commencing the work.”

The respective norm regulates not only the form for concluding legal labour relationship, but also defines, where persons imprisoned in different types of prisons may be employed. It follows from this legal norm that only those convicted persons, who serve their sentence in an open prison, may be employed by an employee outside the prison territory. Whereas those convicted persons, who are serving their sentence in a closed or a partly-closed prison, may be employed only in workplaces set up in the territory of the facility for deprivation of liberty and the maintenance works thereof.

The Applicant is serving his sentence in a partly-closed prison. Therefore it can be concluded that Section 56³ (1) of the Code prohibits employing him by an employer outside the prison territory.

13.2. The Applicant, turning to the prison governor and to the Administration and requesting a permission to work with an employer outside the prison territory, used Section 56⁵ (2) of the Code to substantiate his request. This norm envisages that those convicts, who serve their sentence on the higher regime at a closed or partly-closed prison, with a written permission by the head of the institution of deprivation of liberty, approved by the Administration, may be employed outside the prison territory without guards, if their supervision is ensured. The Applicant holds that this norm grants him the right to ask permission for being employed by an employer outside the institution for deprivation of liberty.

The applicant has an erroneous understanding of the content of Section 56⁵ (2) of the Code, since it is incompatible with the aforementioned content of Section 56³ (1) of the Code. The Saeima notes, with good reason, that systemic interpretation of the norms of the Code leads to the conclusion that the legislator’s aim, in delegating the right envisaged by Section 56⁵(2) to the prison governor, was to ensure comprehensive fulfilment of the functions set for the institution for deprivation of liberty, not granting the right to convicted person to freely conclude

employment contracts with employers outside the institutions for deprivation of liberty, while serving a prison sentence in a closed or partly-closed prison (*see Reply by the Saeima, Case Materials, p. 66*). The purpose of this norm is to ensure the possibility to employ convicted persons in maintenance works outside the institutions for deprivation of liberty, for example, cleaning territory owned by the institution for deprivation of liberty, but not ensuring the possibility to convicted persons to establish labour law relationships with employers outside prison (*see Explanation by the Ministry of Justice, Case Materials, p. 95*).

Thus, the Code prohibits employing persons, who are imprisoned in a closed or partly-closed prison, by an employer outside the prison territory.

13.3. At the same time it must be noted that even those convicted persons, who serve their sentence in an open prison and in accordance with the Code may be employed by an employer outside the institution for deprivation of liberty, do not have absolute freedom in choosing their workplace. In view of the aim of serving a sentence, the sentence execution regime, as well as the need to protect public safety, convicted persons may be employed only in such workplaces, where no threat to public safety can occur. Pursuant to Section 56³ (3) of the Code, also in such instance permission by the prison governor is necessary. Hence, the fundamental rights included in Article 106 of the Satversme are applicable to convicted persons only insofar they are compatible with the aim of serving a sentence that deprives of liberty and the sentence execution regime, and does not envisage the right of convicted persons to freely choose a workplace outside the institution for deprivation of liberty.

14. In view of the fact that convicted persons do not have the subjective right to freely choose a workplace outside the institution for deprivation of liberty, a significant restriction of human rights of a person specially subordinate to an institution, in the meaning of the third sentence of APL Section 1(3), cannot be identified. The Administration's decision regarding a convicted person's right to be employed outside the institution for deprivation of liberty is to be regarded as an internal decision of an institution, not an administrative act and is not subject to control by an administrative court.

It also follows from the aforementioned circumstances that the Administration's decisions does not affect the rights and lawful interests of a person specially subordinate to an institution in the meaning of the first sentence of Article 92 of the Satversme. Therefore the first sentence of Article 92 of the Satversme does not require that a judicial control over the legality of this decision were established.

Thus, the contested norm, insofar it applies to the employment of convicted persons outside the institution for deprivation of liberty, complies with the first sentence of Article 92 of the Satversme.

15. The Constitutional Court underscores that in the case under review the compatibility of the contested norm with the first sentence of Article 92 of the Satversme was examined in interconnection with the facts of the particular case. In this case no assessment has been made regarding other cases, when the right of specially subordinate persons (convicted persons) to turn to court could be restricted on the basis of a prohibition established by the Code.

Reasonable restrictions may be placed upon the right to a fair court in order to ensure effective functioning of the court system. The legislator should take care of relieving courts from examining obviously unfounded applications and prevent misuse of court resources.

However, the legislator should take into consideration that the first sentence of Article 92 of the Satversme requires that in those instances when a person's rights and lawful interests are affected, the person should be ensured at least the minimum right to turn to court, i.e., the right to have the case heard at least in one instance. Such right may be denied only in exceptional cases, when an institution adopts an internal decisions regarding a specially subordinate person and no significant restriction to human rights in the meaning of APL Section 1 (3) can be identified, and also the rights and lawful interests of this person in the meaning of the first sentence of Article 92 of the Satversme are not affected. Moreover, cases, when an internal decision of an institution could affect also human rights of a specially subordinate person and should be considered an administrative act, are also possible.

The Substantive Part

The Constitutional Court, on the basis of Section 30 -32 of the Constitutional Court Law,

held:

to recognise the sixth sentence in Section 56³ (3) of the Sentence Execution Code of Latvia as being compatible with the first sentence of Article 92 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force in the day of its publication.

Chairperson of the court sitting

A. Laviņš