THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGEMENT

on behalf of the Republic of Latvia

Riga, 21 June 2012

Case No. 2011-20-01

The Constitutional Court of the Republic of Latvia composed of the Chairperson of the Court hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to the constitutional complaint submitted by Andrejs Klišins,

according to Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1) and Section 19^2 and Section 28^1 of the Constitutional Court,

on 25 May 2012 reviewed in written procedure the case

"On Compliance of Para 1 of Section 20 (1) of the Law on State Social Allowances with Article 91 and Article 109 of the Satversme of the Republic of Latvia."

The Facts

1. On 31 October 2002 the Saeima [the Parliament] adopted the Law on State Social Allowances (hereinafter – the Allowances Law). Pursuant to Section 1 of this Law, its purpose is, inter alia, to determine the range of those persons who have the right to allowances, the conditions for granting the allowances and the procedure for granting and disbursement thereof.

Section 2 of the Allowances Law provides that allowances are State support in the form of money payments, which are received by persons belonging to certain groups of inhabitants in situations, when additional expenditure is necessary or when these persons can not obtain income and when a compensation from the State social insurance system is not provided.

Section 13 of this Law sets out the conditions for granting the State social security benefit. Pursuant to Para 2 of Section 13(1) a benefit is granted to a person, who is not entitled to a state pension or insurance compensation due to accident at work or occupational disease, if the person has been recognised as a disabled person and has exceeded the age of 18. Such persons are granted the state social security benefit for the period of disability that is set.

Para 1 of Section 20 (1) (hereinafter – the contested norm) provides that the disbursement of the State social allowances disbursed at regular intervals is discontinued temporarily, while the recipient of the allowance or a child for whom an allowance is disbursed is fully State supported.

2. **The applicant Andrejs Klišins** (hereinafter – the Applicant) notes that on 21 October 2004 he was granted the invalidity group III, but on 20 September 2010 – the invalidity group II, for an unlimited term.

The Applicant points out that with the Decision No. 10436 of 22 February 2010 by the State Social Insurance Agency he was granted the State social security benefit. In accordance with the contested norm its disbursement has been discontinued, since the Applicant is in prison. Neither has the

administrative court satisfied his application regarding the disbursement of the State social security benefit that has been granted to him.

It is noted in the application that the term "fully State supported" should be understood as meaning that "the person does not need money for supporting himself", however, this cannot be applied to persons with invalidity, since the State does not ensure reducing the consequences of invalidity and the special needs of persons with invalidity are not met. Persons with invalidity, while being in prison, are not fully State supported, thus, the State social security benefit should be disbursed to them.

The Applicant points out that he has no money to pay 0.50 LVL for each prescription of reimbursement medicines. Likewise, he has no resources to send letters to relatives, to purchase clothing, shoes and other necessary items, to pay for the consumed electricity (therefore he has no possibility to watch TV), to make copies of documents, to visit doctors while being on leave and to purchase medicines prescribed by the doctor. Hence, the contested norm denies the Applicant the right to social security guaranteed in Article 109 of the Satversme of the Republic of Latvia (hereinafter – the Satversme).

The Applicant notes in his supplementary explanations that the purpose of the State social security benefit is to decrease the consequences of invalidity, not to provide for a person's basic needs (for example, food, clothing, housing). The Prison Administration has no resources for reducing the consequences of invalidity, thus the needs of imprisoned disabled persons are not met. Thus, there are no grounds to discontinue disbursement of the State social security benefit to persons in custody.

The Applicant holds that the contested norm is incompatible also with the principle of equality enshrined in Article 91 of the Satversme, as the norm without objective and reasonable grounds envisages different treatment of two groups of persons. I.e., those persons, whose period of insurance exceeds three years and who have been granted an invalidity pension, can receive it also while being in prison, but those persons, which have been granted the State social security benefit and are in prison, cannot receive it. Thus, the contested

norm envisages different treatment of persons with invalidity, which are in prison and whose State social security benefit disbursement has been discontinued, and persons with invalidity, which are free and are able to receive various kinds of social assistance. However, as regards persons with invalidity and without invalidity, which are imprisoned, equal treatment has been envisaged groundlessly, even though theses persons are in different situations.

3. The institution, which adopted the contested act, – the Saeima – holds that the contested norm complies with Article 91 and Article 109 of the Satversme.

The Saeima holds that full State support is one of the ways in which the State implements a person's right to social security. The social security measures are compensatory; for example, a person is provided social assistance, if he or she cannot receive social insurance services. The State does not provide several kinds of social security measures to a person under conditions of the same social risk. The State is using the resources at its disposal as frugally as possible, so that the social security would be available to as many people as possible, at the same time providing incentives to people to participate in the social insurance system.

Since the Applicant is fully supported by the State, his right to social security is implemented. Also, the contested norm does not infringe upon the principle of equality enshrined in Article 91 of the Satversme. If the State were to grant to the Applicant also services of the social assistance system in addition to full State support, it would be a deviation from the basic principles of law guaranteeing social security.

The Saeima draws the attention of the Constitutional Court to the fact that the contested norm does not define the content and the scope of full State support. The conclusion, which indirectly follows from the application, is that, in fact, the Applicant is not satisfied with the amount of services provided by the Sate, while being in full State support.

The Saeima holds that revocation of the contested norm and disbursement of benefit to persons who have full State support would not be a systemically correct solution, since it would be impossible to satisfy persons' needs with the mediation of the social assistance system and also to eliminate shortcomings or deficiencies of the state support system. Moreover, it would be impossible, nevertheless, to eliminate possible shortcomings in the field of providing medical care to persons having fully State support by revoking the contested norm. Therefore the Saeima asks to recognise the contested norm as being compatible with Article 91 and Article 109 of the Satversme.

4. The summoned person – the Ministry of Justice – notes that the State is obliged to establish an effective mechanism for implementing the right to social security. The Ministry of Justice holds that those applying the law have to interpret the term "full State support", used in the contested norm. Legal acts do not directly provide that prison inmates are fully supported by the state, however, in accordance with the case law the persons in custody are to be considered as having full State support.

The Ministry of Justice notes that in accordance with regulatory enactments the basic everyday needs of all prison inmates, without exception, are met; i.e., they are provided with "temporary housing" (understanding by it living premises at the place of detention), food, items of everyday life, utilities, as well as health care. The inmates of open prisons are also provided with clothes and shoes. Thus, the Applicant's right to social security is already ensured. If the applicant were to receive in addition to the provisions ensured by the state at the place of imprisonment also the services of the social assistance system, he would receive double care from the State. Such treatment would differ from the treatment of persons with invalidity, which are at liberty, and would also create additional burden to the total budget. Hence, the contested norm has the legitimate aim to prevent double State care to imprisoned persons, which already have full State support, in the interests of

society. The contested norm is appropriate for reaching the legitimate aim and also complies with the principle of proportionality.

A person with invalidity, who is in prison, has full State support and cannot be equalled with a person with invalidity, which is not imprisoned. Thus, in a situation like this a different treatment of the aforementioned groups of person is admissible and even necessary.

Alongside the State's obligation to ensure certain social guarantees to prison inmates the legislator has envisaged also the rights to the inmates to pay for special services that they need themselves. The system of provisions for the inmates has been established in accordance with the principle that the goods and services of primary necessity are provided for by the State; but the inmates, using their own resources, should pay for more exclusive services or the use of special rights.

The Ministry of Justice notes that the minimum insurance period needed for invalidity pension insurance – three years – is a very minimal requirement, which has to be met in order for the person to receive extensive and long-term social service – the invalidity pension. The systems of invalidity pensions and the system of the State social benefits are not mutually comparable.

By analogy with the contested norm the second and fifth part of Section 20 of the Allowances Law envisage that the disbursement of a benefit for a child is discontinued, if the child is placed in a state, local government of private child care and educational institution and has its full support or is placed in a foster family for upbringing. The disbursement of benefit for a person with invalidity, who needs care, is discontinued, when the person is placed in a state or local government institution of long-term social care or social rehabilitation. Thus, the contested norm systemically fits into the procedure established by the legislator, which envisages that the disbursement of benefits is to be discontinued in situations that are analogous to the actual facts of the case under review.

In view of the aforementioned the Ministry of Justice holds that the contested norm complies with Article 91 and Article 109 of the Satversme.

5. The summoned person – the Ministry of Welfare – notes that the term "full State support" is mentioned in a number of regulatory enactments that regulate the field of social security. When assessing the full State support provided to prison inmates with disability, the person's need of appropriate health care should be taken into account. The Ministry of Welfare holds: persons with invalidity, while being in prison, have full State support, if reducing the consequences of invalidity is ensured. It follows from the Judgement of 9 March 2010 by the Constitutional Court in Case No. 2009-69-03 that disbursement of the State social security benefit to persons in prisons would be incompatible with the purpose of the contested norm – to prevent double care for persons, whose basic needs are met from the State budget resources. The Ministry of Welfare also holds the opinion that disbursement of the State social security benefit to persons who have full State support would be systemically incorrect solution. Instead, persons with invalidity should be ensured appropriate health care at prisons.

The Ministry of Welfare also points out that prison inmates, which have been granted invalidity pension, and persons, which have been granted State social security benefit, are not in comparable circumstances.

6. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that in this case, first of all, the question of the interpretation and application of the contested norm should be assessed, i.e., it should be established, whether the term "full State support", which it contains, applies also to persons with invalidity, which are in prison.

The Ombudsman points out that the purpose of the State social security benefit as regards persons with invalidity is to provide material assistance for covering invalidity linked expenditure in those cases, when a person can not receive compensation from the state social insurance system.

The Ombudsman upholds the opinion of the Saeima that in those cases when a person's right to social security is ensured, the restriction on receiving social assistance services of a similar nature is grounded. Therefore it should be

ascertained, whether a person's basic needs are satisfied in prison, since providing for these needs is the primary objective of rights to social security. Interpretation of the term "full State support" has been placed within the competence of those applying the law, and the imprisoned persons are also considered as person having full State support. The Ombudsman holds that in this case the legal aspect and the actual situation should be differentiated.

The Ombudsman notes that judging by the information at its disposal, in prisons a person with invalidity, in fact, does not have full State support. However, recently the legal regulation of the health care sector has been amended several times, bringing the prison health care closer to the general procedure for receiving health care services in the state and expanding the range of services accessible to persons with invalidity in prisons. Health care to inmates is provided within the framework of the allocated funding.

The Ombudsman concludes that those basic needs of persons with invalidity that are connected with the consequences of invalidity should be met, otherwise a person's right to social security is not implemented and these persons are not ensured full State support. The Ombudsman holds that the issue of the persons' with invalidity right to the State social security benefit in prisons should be dealt with in the process of applying the contested norm. The State Social Insurance Agency should assess on case-by-case basis the legal and actual circumstances and, if necessary, take a decision to continue disbursement of the benefit.

7. The summoned person – the Prison Authority – notes that none of the regulatory enactments currently in force defines the term "full State support", neither has it been set out that prison inmates have full State support. The legislator, in its turn, has defined the obligation of the State to give to the inmates, inter alia, persons with invalidity, certain guarantees, i.e., supply them with items of first necessity, living space and food, health care. Prison inmates have the possibility to work and earn money. They also have the obligation to pay for the services for a charge that they receive in prison, for example, pay

for the electricity consumed by their personal technical equipment. The state provides health care to prison inmates within the scope defined by regulatory enactments. The Prison Authority concludes that only children younger than four years receive full State support, if they reside in prison together with their imprisoned mother. It follows only from the Judgement of the Constitutional Court that all prison inmates have full State support, for example, from the Judgement in Case No. 2009-69-03.

The Prison Authority informs that there are social workers working in prisons, who provide advice and information to persons with invalidity on the possibility of solving social problems while serving the sentence and also following their release, they facilitate the restoration of the prison inmates' social skills or acquisition of new skills, assist in obtaining personal identity documents and in going through other formalities. In open prisons clothes are not issued to all prison inmates, but only to those, which have no clothes of their own and have no means for purchasing them.

Prison inmates receive the most effective and cheapest medicines, but the patients' co-payment for medicines, as well as all other expenditure related to treating prison inmates at the Latvian Prison Hospital or medical facility outside prisons (transportation and guarding costs, specific examinations, etc.) are covered from the prison's resources.

8. The summoned person – the National Health Service – points out that the procedure of providing and funding health care to prison inmates is regulated by the Latvian Sentence Execution Code, the Cabinet of Ministers Regulation of 20 March 2007 No. 199 "Regulation on health care of arrested and sentenced persons in pre-trial prisons and places of deprivation of liberty", as well as a number of other regulatory enactments.

The National Health Service explains that the invalidity of a person or a person's being in a prison is not grounds for exempting the person from paying 0.50 LVL for each prescription, when purchasing medicines included in the list of reimbursement medicines.

9. Rīga Central Prison, Brasa Prison, Daugavgrīva Prison, Iļģuciems Prison, Jelgava Prison, Liepāja Prison, Olaine Prison, Šķirotava Prison, Vecumnieki Prison and Valmiera Prison inform that approximately a half of persons with invalidity do not receive invalidity pension. However, in some prisons the share of such persons is even larger, for example, at Daugavgrīva prison out of 46 persons with invalidity 29 persons do not receive invalidity pension, but at Valmiera Prison out of 19 persons with invalidity 15 persons do not receive invalidity pension.

The prisons also informed the Constitutional Court that social workers work there, that inmates' health care expenditure is covered and that, in case of necessity, also the 0.50 LVL payment for each prescription for medicines reimbursed by the State is paid.

The Constitutional Court Establishes:

10. Article 109 of the Satversme provides:

"Everyone has the right to social security in old age, for work disability, for unemployment and in other cases provided by law."

The Constitutional Court has indicated that social rights are very important, but simultaneously these are special, different human rights, since the implementation of these rights depends upon the economic situation and accessible resources in each state. Article 109 of the Satversme guarantees to inhabitants the right to a stable and predictable, as well as effective, fair and sustainable system of social protection, which ensures proportional social security. However, this norm also envisages and allows certain differences in the provision of social security (*see, for example, Judgement of 13 March 2001 by the Constitutional Court in Case No. 2000-08-0109, the Findings, and Judgement of 15 April 2010 in Case No. 2009-88-01, Para 8).*

The State has established a social security system, comprising social insurance services, social assistance and other measures. The State has

discretion in choosing the methods and mechanisms for implementing social security. Usually the decisions in this field depend not so much upon legal, but rather upon political considerations, which, in their turn, depend upon the legislator's view on the principles for providing social services, the economic situation of the state and the need of society or part thereof for State assistance or support *(see: Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 15 and Para 21)*. However, the discretion of the State is not absolute. With regard to those social insurance services, the receiving of which depends upon the contributions made by a person into the state social insurance budget, the discretion of the State is narrower (*see, for example, Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01, Para 11)*. Regarding the social assistance services, the receiving of which does not depend upon the contributions made by a person, the State has broader discretion.

11. Pursuant with Para 17 of Section 1 of the Law on Social Services and Social Assistance, social assistance is a benefit in cash or in kind to persons (families), who lack resources for satisfying their basic needs. State social benefit is one of the types of social assistance.

11.1. The contested norm provides that the regularly disbursed State social benefit is discontinued for the period of time, while the recipient of the benefit or the child, for whom the benefit is disbursed, has full State support.

The State social security benefit is one of the regularly disbursed benefits, which, in accordance with Section 13(1) of the Allowances Law, is granted to persons, who are not entitled to a state pension or insurance compensation in case of an accident at work or occupational disease. Section 14(1) of the law "On State Pensions" provides that those persons, whose social insurance period is at least three years, are entitled to invalidity pension. Since the Applicant's period of insurance is shorter than three years, he was not granted an invalidity pension. The disbursement of the State social security

benefit, which was granted to him, was discontinued on the basis of the contested norm.

11.2. The contested norm is broad and applies to all recipients of regularly disbursed benefits; inter alia, socially uninsured persons with invalidity, which have been granted the State social security benefit. Moreover, "having full State support" is understood as the person being in prison or any other institution, for example, state institutions of long-term social care and social rehabilitation, specialised treatment facilities. The contested norm covers also those cases, when a child, for whom one of the regularly disbursed benefits has been granted, has full State support.

The Constitutional Court has repeatedly indicated: if the contested norm applies to an extensive body of different situations, then it should specify the extent to which it is going to examine this norm *(see: Judgement of 28 May 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6 and Judgement of 19 December 2011 in Case No. 2011-03-01, Para 13).*

The constitutional complaint contests only the discontinuation of the disbursement of the State social security benefit for the period of time, while the person with invalidity is in prison. Hence, the Constitutional Court has no legal grounds to examine the contested norm in full, but only insofar it applies to discontinuation of the disbursement of the State social security benefit to persons with invalidity, serving a sentence depriving of liberty in prison.

12. First of all the Constitutional Court has to examine, whether the contested norm restricts a person's rights to social security, enshrined in Article 109 of the Satversme, at all, as the Applicant contends. Hence, inter alia, the content and meaning of the concept "full State support" has to be clarified.

12.1. No regulatory enactment contains *expressis verbis* explanation of the concept "having full State support". The term itself is used only in a few regulatory enactments.

The Constitutional Court upholds the view of the Saeima and the summoned persons – the Ministry of Justice, the Ministry of Welfare and the

Ombudsman that those applying the legal norms should interpret the concept "full State support" and reveal its content. In accordance with the case law of the Department of Administrative Cases of the Senate of the Supreme Court and other administrative courts, "having full State support" means that a person resides an institution funded by the basic State budget, which, in accordance with the procedure set out in law, ensures that the persons basic needs are met *(see, for example, Decision of 22 August 2011 of the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-818/2011, Para 8).*

The Constitutional Court has repeatedly established that the prison inmates have full State support. This was recognised also by the Cabinet of Ministers *(see, for example, Judgement of 12 June 2002 by the Constitutional Court in Case No. 2001-15-03, the Facts and Para 3.1. of the Findings, and Judgement of 9 March 2010 in Case No., Para 3 and Para 8.3).*

12.2. In accordance with Para 11 of Section 11 of the Law on Social Services and Social Assistance the following shall be recognised as a person's basic needs: food, clothing, housing, health care and compulsory education.

Section 77 of the Latvian Sentence Execution Code sets out the general provisions on the scope of services that are to be provided in order to meet the material and everyday needs of imprisoned persons. The Cabinet of Ministers Regulation of 19 December 2006 No. 1022 "Regulation on the ratios of food and material provisions for everyday needs of persons convicted with deprivation of liberty" contains detailed enumeration of provisions to meet the material needs of convicted persons.

12.3. The Constitutional Court has recognised: "When ensuring prison inmates with food, it must be taken into consideration that they have full State support and are subject to state institutions. [..] Thus, the majority of inmates depend upon the food that is provided to them by the State. Thus, the State has the obligation to provide sufficient food to prison inmates" *(Judgement of 9 March 2010 by the Constitutional Court in Case No. 2009-69-03, Para 8.3).*

As with regard to food, the majority of prison inmates can receive only those health care services, which are ensured by the State.

The general procedure for providing health care services to prison inmates is set out in Section 78 of Latvian Sentence Execution Code. On the basis of the first part of this norm the Cabinet of Ministers on 20 March 2007 issued Regulation No. 199 "Regulation on the health care of arrested and sentenced persons in pre-trail prisons and institutions of deprivation of liberty", Para 2 of this Regulation provides that prison inmates can receive free of charge:

1) primary health care, except for scheduled dental assistance;

2) emergency dental assistance;

3) secondary health care, which has to be provided urgently, as well as secondary health care, which is provided by prison doctors according to their speciality;

4) most effective and cheapest medicines, prescribed by a member of the prison health care staff.

This is a general list, according to which each prison inmate should be provided with those health care services that he or she needs. The scope of the health cares services, which an individual prison inmate needs, depends upon individual criteria and, thus, varies.

Section 5(1) of the Disability Law provides that a disability is a long-term or non-transitional very severe, severe or moderate level limited functioning, which affects a person's mental or physical abilities, ability to work, self-care and integration into society. Section 12 of the Law "On Social Security", in its turn, provides that persons with invalidity, irrespectively of the cause of invalidity, are entitled to assistance for improving their health status, for creating such conditions and implementing such measures that would prevent deterioration of their health conditions and would facilitate decreasing the level of health and capacity for work loss.

The Constitutional Court concludes that one of the basics needs for a person with invalidity is to receive such health care services that would prevent

deterioration of their health status and would reduce the consequences of invalidity. Thus, the range of health care services needed by persons with invalidity is broader, and an imprisoned person with invalidity has full Sate support only in case, if he or she can receive exactly those health care services that he or she needs.

Thus, as regards persons with invalidity, their needs that are connected with their special health status are to be considered as the basic needs of these persons, and if a person has full State support, these basic needs should be met.

13. As regards the actual conditions referred to in the Application, the Constitutional Court notes that in accordance with the information provided by the Ministry of Justice and the Prison Authority, if necessary, prison inmates are provided with clothing also in open prisons *(see: Case Materials Vol.1, pp. 124 and 183)*. The prisons also inform that the patients' co-payment in the amount of 0.50 LVL for each prescription of State reimbursed medicines is covered, if the prison inmates themselves have no resources.

Some of the Applicant's needs and wishes, mentioned in the constitutional complaint, for example, to make copies of the documents or to receive resources for spending while being on leave during the imprisonment, in their turn, can not be regarded as a person's basic needs. The fact that a person has full State support does not prohibit requesting the person's participation in covering expenditure, which exceeds the mandatory minimum that should be provided.

14. The Constitutional Court has pointed out that the State has the obligation to see to it that a person is not left without means of subsistence (*see: Judgement of 29 October 2010 by the Constitutional Court in Case No. 2010-17-01, Para 10.4)*. In the field of social rights the core of the State positive obligations contains also ensuring such social assistance, which is guaranteed also in cases, if the person has not made social insurance

contributions (*see: Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01, Para 15.3).*

Moreover, it should be taken into consideration, the State has not only the right, but also the obligation to correlate its commitments in the field of social rights with its economic possibilities, otherwise the fulfilment of other State duties might be hindered, inter alia, the implementation of other social rights (*see: Judgement of 18 February 2011 by the Constitutional Court in Case No. 2010-29-01, Para 15).* Thus, the State has the obligation to implement a person's right to social security at least on the minimum level.

The Constitutional Court concludes that in Latvia the rights of uninsured persons with invalidity to social security are ensured in one of the alternative ways, i.e., as the right to receive the State social security benefit or as the right to receive care, having full State support. If a person with invalidity is in prison, then his or her rights to social security on at least minimum level are implemented in the framework of full State support. Thus, the State system of social security ensures that the rights of every uninsured person with invalidity to social security on minimum level are implemented.

Thus, the disbursement of the State social security benefit or full State support are alternative options for implementing a person's right to social security. The Constitutional Court noted that the contested norm does not mean derogation from the positive obligation of the State to implement the right to social security at least on the minimum level, but in the interests of societal welfare and the safeguarding the rights of other persons prevents double care for a person with invalidity in prison. Thus, the contested norm restricts a person's rights to receive the State social security benefit in certain cases, however, *per se* it does not infringe upon the person's basic right enshrined in Article 109 of the Satversme to social security.

Thus, the contested norm complies with Article 109 of the Satversme.

15. The Applicant has requested to examine the compliance of the contested norm with Article 91 of the Satversme, which provides:

"All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind."

The legislator enjoys broad discretion in the field of social rights; however, the legal regulation in this field of law must comply with Article 91 of the Satversme (*see: Judgement of 4 January 2007 by the Constitutional Court in Case No. 2006-13-0103, Para 6).*

It follows from the application that the Applicant request examining the compliance of the contested norm with the first sentence of Article 91 of the Satversme. The Constitutional Court has noted that the principle of equality prohibits state institutions to adopt norms, which, without reasonable grounds, allow different treatment of persons, which are in similar and according to specific criteria comparable conditions. The principle of equality and allows and even requires different treatment of persons, which are in different conditions, it also allows different treatment of persons, which are in similar conditions, if it has objective and reasonable grounds. The principle of equality must guarantee the existence of uniform legal order. However, such uniformity of legal order does not mean levelling out, since equality allows differential approach, if it can be justified in a democratic society (*see, for example, Judgement of 3 April 2001 by the Constitutional Court in Case No. 2000-07-0409, Para 1 of the Findings, and Judgement of 14 September 2005 in Case No. 2005-02-0106, Para 9.1).*

To assess, whether the contested norm complies with the first sentence of Article 91 of the Satversme, the Constitutional Court, first of all, has to examine, whether persons with invalidity, which are in prison and to whom the disbursement of the State social security benefit has been discontinued, are in similar and according to certain criteria comparable conditions with other groups of persons, and, secondly, whether the contested norm envisages different treatment of these persons, and, thirdly, whether this treatment has objective and reasonable grounds, i.e., whether it has a legitimate purpose and

whether the principle of proportionality has been complied with (*see: Judgement of 10 June 2011 by the Constitutional Court in Case No. 2010-69-01, Para 10).*

16. The constitutional complaint and the additional explanations provided by the Applicant note that persons with invalidity, which are in prison and to whom the disbursement of the State social security benefit has been discontinued, are in similar and according to certain criteria comparable conditions with, firstly, persons with invalidity, which are in prison and receive invalidity pension, and, secondly, with persons with invalidity, which are not in prison and to whom the granted State social security benefit is disbursed.

Thirdly, the Applicant also holds that ungrounded similar treatment of persons with invalidity, which are in prison, and other prison inmates is allowed as regards the services received and material provisions, event though these persons are not in similar and comparable conditions.

16.1. The Constitutional Court, assessing, whether persons with invalidity in prison, to whom the disbursement of the State social security benefit has been discontinued, and persons, to whom invalidity pension is disbursed, are in similar and comparable conditions, points out that it has already ruled on the rights of persons with invalidity in prisons to receive social security.

In its Judgement in Case No. 2003-22-01 the Constitutional Court found that persons with invalidity, which have been granted an invalidity pension, and persons, which have been granted compensation for the loss of capacity for work, are in similar and comparable conditions, it also established differential treatment of these groups of persons depending upon the cause of invalidity and the time, when it occurred (*see: Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01, Para 9 and Para 10).* The Constitutional Court found that with regard to persons, which have been granted compensation for the loss of capacity to work, the disbursement of these compensation was discontinued for the period of time, while these

persons were in prison, on the basis of the norm that was contested in Case No. 2003-22-01. The Constitutional Court found that this norm was incompatible with Article 91 and Article 109 of the Satversme.

As the Constitutional Court has previously established, the total state system of social security consists of two different systems – the system of social insurance and the system of social assistance, and the limits of the State's discretion with regard to these two systems differ. Case No. 2003-22-01 comprised comparison of two disbursements, which depend upon the social insurance contributions, made for the person, i.e., invalidity pension and compensation for the loss of capacity for work. The Constitutional Court concluded: for person's entitlement to social insurance service, it is important that the contributions were made and that they had to be made. If an employee has the insurance of a concrete type of social insurance, then, in case the insured event occurs, he or she is entitled to appropriate security. The Constitutional Court also concluded that in this case the linking of the contested norm with a person's having full State support was not grounded (*see: Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01 10, Para 11 and Para 12.2).*

In the case under review the Applicant compares the social insurance service (invalidity pension) and the social assistance service (the State social security benefit). The systems of social insurance and social assistance are interconnected and supplement each other, however, each of them has its own aim, objective, functions and principles. A person, which is unable to provide for himself or herself or is unable to overcome particular difficulties in life and does not receive sufficient assistance from anyone else, is entitled to social assistance (*see: Judgement of 13 March, 2001 by the Constitutional Court in Case No. 2000-08-0109, the Findings).*

Thus, in difference to the invalidity pension or other disbursement within the framework of the social insurance, the granting of and the amount of the State social security benefit does not depend upon the social insurance contributions made, their amount or the period of insurance, i.e., the recipients

of the State social security benefit did not create accruals by making contributions into the social insurance budget.

Hence, persons with invalidity in prison, to whom the disbursement of the State social security benefit has been discontinued and to whom invalidity pensions are disbursed, are not in similar and according to specific criteria comparable conditions. It should also be taken into consideration that since the coming into force of the Judgement in Case No. 2003-22-01, the provisions for meeting the prison inmate's basic needs have improved, for example, they have access to assistance provided by a social worker, the prison health care system has been included into the general health care system.

16.2. Assessing, whether persons with invalidity, which are in prison and to whom the disbursement of the State social security benefit has been discontinued, and persons with invalidity, which are not in prison and to whom the granted State social security benefit is disbursed, are in similar and comparable circumstances, the Constitutional Court notes, that persons with invalidity at liberty are entitled to various social assistance and social services provided by the state and local governments. However, for persons with invalidity at liberty the social security benefit and the social assistance provided by local government frequently is the only source for meeting all basic needs, including decreasing the consequences of invalidity, but the basic needs of prison inmates, inter alia, housing, clothes (if necessary, also in open prisons), food, health care, at least on the minimum level, are met, covered from the State budget resources. Thus, these groups of persons are not in similar and according to specific criteria comparable conditions.

16.3. The Constitutional Court does not uphold the Applicant's opinion that similar treatment of two other groups of persons, which are not in similar and comparable conditions, i.e., persons with invalidity in prison and other prison inmates, should be allowed as regards the services and material provisions received. As the Constitutional Court already concluded, the legal regulation, which established the procedure and the scope of services to be provided, for example, health care services, envisages possibilities for ensuring

to each prison inmate the services that he or she needs. Likewise, persons with invalidity are entitled to medical technical equipment, pursuant to Para 1 of Section 25 (1) of the Law on Social Services and Social Assistance. Thus, it cannot be recognised that similar treatment of both aforementioned groups of persons, which are not in similar and according to specific conditions comparable conditions, was allowed.

Thus, the contested norm complies with Article 91 of the Satversme.

17. The Constitutional Court upholds the Ombudsman's opinion that as regards prison inmates having full State support the legal regulation should be differentiated from the actual situation. The Constitutional Court has established that the contested norm *per se* does not restrict persons' fundamental rights enshrined in Article 91 and Article 109 of the Satversme. Likewise, it was established that in principle prison inmates have full State support. However, this does not mean that as an exception it cannot be concluded that a concrete person in a concrete situation, nevertheless, was not ensured full State support, for example, because the State lacked sufficient resources. Thus, the rights of persons with invalidity to social security should be realized in the procedure of applying legal norms, by the State Social Insurance Agency and administrative courts assessing, whether the concrete recipient of the State social security benefit, which is in prison, has actual full State support, i.e., whether the person's all basic needs are met, including also those linked to reducing the consequences of invalidity.

Thus, the District Administrative Court in its decision of 13 February 2009 in Case No. A42559308 / A2403-09/3 noted that it had to establish the content of the concept "full State support" with regard to a person with invalidity and concluded that in the concrete case the basic needs of the applicant were met and he had full State support, "in difference to those cases, when a disabled person, who needs such social and medical assistance, which the State, due to limited resources, cannot provide from the Sate budget resources, is in prison." *(see: Decision of 13 February 2009 by the District*

Administrative Court in Case No. A42559308 / A2403-09/3, Para 9 and Para 11). Thus, the institution applying the contested norm, upon examining all the conditions, might conclude, whether a person in prison is not provided with full State support. As the Constitutional Court has indicated, the State has to meet the basic needs of prison inmates at least on the minimum level.

Thus, the issue, whether the Applicant has full Sate norm, is to be solved in the process of applying the norm, not at the Constitutional Court. The District Administrative Court (Jelgava Court House) has informed the Constitutional Court that it is adjudicating administrative case No. A420514911, initiated on the basis of the Applicant's application regarding revoking the decision of 19 April 2011 by the State Social Insurance Agency No. 09-5/5243

The Substantive Part

Under Sections 30 – 32 of the Constitutional Court Law, the Constitutional Court

h o l d s :

to recognise Para 1 of Section 20 (1) of the Law on State Social Allowances as compatible with Article 91 and Article 109 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

The Judgement enters into force as of the day of its pronouncement.

The Presiding Judge G. Kūtris