



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

On Behalf of the Republic of Latvia

Riga, 9 June 2011

Case No. 2010-67-01

The Constitutional Court of the Republic of Latvia composed of the Chairman of the Court session Gunārs Kūtris, and justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Vineta Muižniece and Viktors Skudra

having regard to a constitutional complaint of Mr. Mārtiņš Ēcis,

according to Article 85 of the Satversme (Constitution) of the Republic of Latvia and Article 16 (1), Article 17 (1) Indent 11, and Article 19.² and Article 28.¹ of the Constitutional Court Law,

on 18 May 2011, in writing examined the case

“On Compliance of Section 51 (13) Indent 1 of the Latvian Sentence Execution Code with Article 107 of the Satversme of the Republic of Latvia”.

The Facts

1. Section 51 of the Latvian Sentence Execution Code (hereinafter – the Code) regulates involvement in work of persons sentenced with deprivation of liberty (hereinafter – the convict).

On 6 July 2010, amendments to the Code adopted by the Saeima on 10 June 2010 came into force that supplemented Section 51 of the Code by Paragraph 13 in the following wording:

“The minimum hourly payment rate and the minimum monthly wage to the convicts in accordance to their work fulfilled and aims of re-socialization are as follows:

- 1) 50 per cent of the minimum hourly payment rate and the minimum monthly wage established in the State in the frameworks of normal working hours in respect to the convicts who serve their sentence in a closed or a partially closed prison;
- 2) equivalent to the minimum hourly payment rate established in the State in respect to the convicts that serve their sentence in an open prison;
- 3) 50 per cent of the minimum hourly payment rate established in the State to adolescents in respect to minor convicts.”

2. **The applicant Mr. Mārtiņš Ēcis** (hereinafter – the Applicant) asks the Constitutional Court to assess constitutionality of Section 51 (13) indent 1 of the Code (hereinafter – the Contested Norm). The Applicant holds that establishment of the minimum monthly wage in the frameworks of normal working hours and the minimum hourly payment rate (hereinafter also referred to as the minimum wage) at the amount of 50 per cent of the minimum wage established in the State does not comply with the fundamental right established in Article 107 of the Satversme of the Republic of Latvia to

receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State.

The Applicant indicates that he has been sentenced with deprivation of liberty and serves his sentence in a closed prison. He is employed in economic activities of the prison (hereinafter – economical stuff) as a part time employee. Before the Contested Norm came into force, the Applicant earned a half of the minimum monthly wage established in the State, though at present he receives only the fourth part thereof, namely, slightly above 30 lats. This is not enough to cover all necessary expenses – to pay for electric power used by electric appliances used by him, for cable television, offered vocational training courses and a hostel where he can meet with the relatives, to buy clothes, hygiene products and medicine, provide financial support to his family, as well as to save some means for the time of release from the prison.

When adopting the Contested Norm, the legislator tried to save State budget resources. Previously the State has already restricted wage of prisoners with the same purpose.

It has been indicated in the application that all fundamental rights are mutually related. Article 107 of the Satversme does not permit any discriminatory attitude towards employees. It provides that every employed person has the right to receive, for work done, commensurate remuneration. Therefore Article 91 and Article 107 of the Satversme shall be considered in conjunction. The convicts are regarded as employees in the meaning of Article 107 of the Satversme, and in respect to them both of the following shall be respected – the Labour Law and the Code, the latter being a special legal regulatory framework.

The purpose of the term “the minimum wage established by the State” included in Article 107 of the Satversme is to establish such minimum remuneration for the work done that would be sufficient for meeting basic needs of a person, like domicile, food, clothing etc. Pursuant to Section 61 of the Labour Law, A minimum wage shall not be

less than the minimum level determined by the State. However, remuneration of the convicts has been halved.

In Latvian law and documents binding to Latvia, for instance, in the Article 23 (2) of the Universal Human Rights Declaration and Article 7 of the International Covenant on Economic, Social and Cultural Rights, it has been enshrined that equal remuneration shall be received for work of equal value. The minimum wage limit has been established with a view to avoid any such situation when persons or groups of persons could be enslaved. The Applicant holds that the Contested Norm prohibits him to receive equal remuneration for the work done and discriminate him because he receives a half of the minimum wage if compared to employed persons in open prisons or persons in freedom. Moreover, the Contested Norms applies only to those convicts who are employed as economical staff of the prison, not to merchants. Work fulfilled by the Applicant at the place of imprisonment requires as much effort as an equivalent work in freedom.

The Applicant indicates that the convicts are a separate social group of persons and they differ from the rest of the society by the fact that they have once committed criminal offences and therefore are isolated from the rest of the society. He agrees that employment of the convicts is a positive element of work organization at the prison, that of training and serving of a sentence; however, it is only a part of the re-socialization process of the convicts. Training and instructional measures are of the same importance. Low wages do not motivate the convicts to work. According to the Applicant and contrary to what has been indicated by the Ministry of Justice and the Latvian Prison Administration [*Ieslodzījuma vietu pārvalde*] to the Constitutional court when preparing the case No. 2006-31-01, a system of non-material stimulation has not been established.

The Applicant informs that he has fully covered all losses caused to the victim; however, many convicts do not have such possibility. After release from the prison many convicts have indebtedness. This hampers their re-socialization. Consequently, the legitimate aim of the Contested Norm indicated by the legislator is not reached.

Moreover, the Contested Norms results in the fact that less tax is paid for the Applicant; consequently, he would receive a lower old age pension or unemployment benefit if compared with persons living and working in freedom. The Applicant holds that the Contested Norm should be recognized as null and void as from the date of adopting it.

3. The institution that adopted the contested act, the Saeima [Parliament] holds that the Contested Norm does comply with Article 107 of the Satversme. This norm of the Satversme does not provide that all employees should be guaranteed a certain minimum wage. When adopting the Contested Norm, the legislator performed assessment and concluded that the convicts should be established a different wage.

The Contested Norm has been included into the draft law “Amendments to the Latvian Sentence Execution Code” before the third reading. The Ombudsman also supported supplementation of the Code and adoption of the Contested Norm.

The Saeima holds: It can be concluded from the Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306 that the Constitutional Court admits the right of the legislator to establish a different minimum wage to the convicts from the one established in the Labour Law. Based on this conclusion of the Constitutional Court, it can be considered that the regulatory framework included into the Contested Norm has been established by law, namely, the legislator has made a legal and political decision that the convicts shall be established a different minimum wage.

The Saeima disagrees with the opinion of the Applicant that equal work requires equal remuneration irrespective of the fact whether it is performed in a closed prison, an open or partially closed prison or in freedom. The Saeima refers to what has been established by the Constitutional Court, namely, that in places of imprisonment reasons for employment of the convicts differs from those of employment of persons in freedom.

The convicts serving their sentence in closed or partially closed prisons do not enjoy equal and comparable conditions if compared to the convicts placed in open prisons.

The Contested Norm is based on the Order of 9 January 2009 by the Cabinet of Ministers No. 7 “The Confirmed Concept of Re-socialization of Persons Sentenced with Deprivation of Liberty” (hereinafter – the Re-socialization Concept).

Consequently, the Contested Norm has been elaborated taking into account constitutional characteristics of employment of the convicts provided by the Constitutional Court and trying to assure the most effective possible re-socialization of the convicts.

4. The summoned person – Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) holds that the Contested Norm does comply with Article 107 of the Satversme. Employed convicts and employees living and working in freedom shall not be regarded as two groups of persons enjoying equal and comparable conditions.

Article 7 of the International Covenant on Economic, Social and Cultural Rights guarantees such remuneration that ensures a decent living for themselves and their families. Consequently, the general aim for establishment of the minimum wage is to assure such remuneration to a person that would cover expenses for domicile, food, clothes etc. Prisons are maintained by financial means of the State. Section 77 of the Code envisages the necessary minimum for meeting material and everyday needs of the convicts. It should be taken into account that convicts do not have to cover a range of expenses related to their existence, and minimum social life and nourishment requirements in places of imprisonment are not the same as the ones in freedom. Moreover, employment in freedom and in places of imprisonment has different aims.

The Ombudsman indicates that, in the letter No. 1-5/120 of 26 May 2010 addressed to the Ministry of Justice, it has expressed its support for adoption of the Contested Norm.

5. The summoned person – the Ombudsman holds that the Contested Norm does comply with Article 107 of the Satversme. When adopting the Contested Norm, the legislator has made a legal and political decision, namely, that the convicts can be established a different wage if compared to other members of the society working and living in freedom. The legitimate aim of the Contested Norm is re-socialization of the convicts. Employed convicts and employees living and working in freedom do not enjoy equal and comparable conditions. Likewise, the convicts serving their sentence in closed and partially closed prisons and those who serve their sentence in open prisons do not enjoy equal and comparable conditions. Consequently, a different attitude towards both of these groups of persons is admissible.

According to the Ministry of Justice, it is fair and proportional to establish, in respect to the convicts serving their sentence in closed and partially closed prisons, the minimum wage at the amount of 50 per cent of the minimum wage established by the State. The convicts, who work as economical staff of the prison, are remunerated from the State budget. If they were established the minimum wage established in the State, then the State would pay them double, namely, when disbursing the wage and providing services related with maintenance of the convicts for free. This would not be proportional if compared with living and working conditions of persons in freedom.

The Ministry of Justice informs that it has to prepare and the Minister of Justice has to submit, to the Cabinet of Ministers, draft laws that are necessary for implementation of the 1st version of the summary of the Order No. 443 of 29 July 2010 approved by the Cabinet of Ministers “Concept of Employment of Persons Sentenced with Deprivation of Liberty (hereinafter – Employment Concept). The Code would be supplemented with a new regulatory framework that would be exhaustive enough, systematic and compliant with modern requirements regarding employment of the convicts.

6. The summoned persons, the Latvian Prison Administration holds that the Contested Norm does comply with Article 107 of the Satversme and informs that on 28 February 2011 there were 1068 employed convicts who served their sentence in closed and partially closed prisons.

Based on 26 February 2010 Order No. 31 issued by the Latvian Prison Administration “On Organization of Working Hours, Wage and Number of Working Places in 2010 for Economical Stuff”, in 12 prisons, 149 working places for economic stuff were established; however, it was not enough to fulfil all economical stuff functions.

On 8 July 2010, taking into account coming into force of the Contested Norm, the Order No. 31 was amended by establishing a greater number of working places for economical stuff, namely, it was increased up to 261. Consequently, the Contested Norm permitted increasing the number of working places for economical stuff by assuring constant functioning of prisons.

The Latvian Prison Administration indicates that the Contested Norm has not had a considerable impact on interest in collaboration with prisons in the field of employment of the convicts. Such amendments into the Code is one of the measures to stimulate work of merchants; however, its positive result, namely, number of merchants and number of the convicts involved, can be increased only in the long term.

7. The summoned person, the Latvian Centre for Human Rights [*Latvijas Cilvēktiesību centrs*] holds that the Contested Norm does comply with Article 107 of the Satversme and indicates that, taking into account the fact that the convicts are completely maintained by the State, establishment of the minimum wage of the convicts serving their sentence in closed or partially closed prisons at the amount of 50 per cent of the minimum wage established in the State is grounded. The majority of European convicts receive even lower wage, it being or not related with the minimum monthly salary of the state.

The Latvian Centre for Human Rights refers to judgments of the Constitutional Court wherein it has been recognized that the primary aim of employment of the convicts is their social re-habitation rather than gaining income, namely, this gives the convicts the possibility to preserve their social and working skills. The legislator enjoys a broad margin of appreciation when establishing and improving an effective re-socialization system.

The Latvian Centre for Human Rights agrees with what has been stated by the Saeima in its reply, namely, that the convicts serving their sentence on open prisons differ from other convicts based on their level of re-socialization and the fact that they have already reached the final stage of the sentence; therefore it is necessary to bring them closer to life in the society as far as possible.

The Findings

8. Article 107 of the Satversme provides: „ Every employed person has the right to receive, for work done, commensurate remuneration which shall not be less than the minimum wage established by the State, and has the right to weekly holidays and a paid annual vacation.” Based on the application, it can be concluded that the Applicant asks the Constitutional Court to assess whether the Contested Norm complies with the fundamental rights enshrined in Article 107 of the Satversme to receive an adequate remuneration or the work done which is not less than the minimum wage established by the State.

8.1. Article 107 of the Satversme does not *expressis verbis* determine the minimum amount of the wage, but indicates that the minimum amount of the wage shall be established in the State. The authorization of the legislator to establish the minimum amount of wage in the State is included in the Satversme. Article 107, determining that

the decision on the above issue shall be taken in a legislative way, prohibits the employers to pay smaller wages than those, established by the legislator (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 6*).

8.2. The general issues related with establishment of the minimum wage are regulated by Section 61 of the Labour Law. In Paragraph 2 thereof, the legislator has authorized the Cabinet of Ministers to establish the minimum wage.

At present, 30 November 2010 Cabinet of Ministers Regulation No. 1096 “Regarding the Minimum Monthly Salary and the Minimum Hourly Wage Rate” is in force. Section 2 thereof establishes that the minimum monthly wage in the frameworks of normal working hours shall be 200 lats, whilst the minimum hourly remuneration rate shall be 1,189 lats.

8.3. The Code regulates provisions and procedure for execution of criminal penalties, as well as legal status of the convicts. By means of the Contested Norm, the legislator has established that a separate group of persons, namely, the convicts serving their sentence in a closed or partially closed prison, shall have the minimum working wage at the amount of 50 per cent of the minimum monthly salary established in the State. Consequently, Section 61 (2) of the Labour Law and the Cabinet of Ministers Regulation issued based on the above mentioned section are regarded as general legal norms that are in force insofar as they are not restricted by a special legal norm, namely, the Contested Norm.

17 August 2010 Cabinet of Ministers Regulation No. 780 “Involvement of the Convicts in Work and Procedure of Remuneration in Prisons” also applies to employed convicts. Section 4 thereof provides that the convicts shall be employed as economical staff in the prison, in working places established by merchants in the prison or outside the prison and remunerated if this is permitted by the sentence served by a particular convict (namely, if a convict serves his or her sentence in an open prison).

Section 26 of the above mentioned Cabinet Regulation provides that a head of the prison shall conclude an agreement with the convict working as an economical staff by establishing organization of wage of the convict (time wage system or system of piece wage), working hours, as well as amount of the wage that shall not exceed the minimum monthly salary of the 1st qualification level of the respective monthly wage group of the State direct administration institution. Pursuant to Appendix III of 22 December 2009 Cabinet of Ministers Regulation No. 1651 “Regulation Regarding Work Remuneration, Qualification Levels of Officials and Employees of the State and Self-government Authorities, and Procedures for Determination Thereof”, the minimum monthly wage of the 1st qualification level of this group of monthly salary constitutes, at present, 200 lats.

Consequently, as to the convicts employed as economical staff, it is necessary to apply the legal regulatory framework that determines that their minimum monthly wage shall be 50 per cent of the minimum monthly wage established in the State; moreover, their wage cannot exceed the minimum wage of the 1st qualification group of monthly salary. However, as to the convicts that are employed in working places of merchants ensured in prisons, only the minimum amount of monthly wage has been established.

9. The Constitutional Court has concluded that, insofar as it is compatible with the sentence of the convict, the general legal principles that follow from norms on human rights shall be applicable to the convicts. It is not permissible to establish, for example, non-proportional working hours and unsafe working conditions (*see: Judgment of 21 October 2008 by the Constitutional Court in the case No. 2008-02-01, Para 9.1 and 9.2*).

The Applicant holds that the Contested Norm fails to comply with Article 107 of the Satversme. He also holds that Article 107 of the Satversme shall be considered in conjunction with the principle of equality; consequently, it is not possible to legally establish the minimum labour wage in respect to employed convicts who serve their

sentence in a closed or partially closed prison, and those who serve their sentence in an open prison, as well as employed persons living and working in freedom.

9.1. In case-law of the Constitutional Court, the UN 31 July 1957 Minimum Standard Regulations for the Treatment of Prisoners (hereinafter – the Minimum Standard Regulations) and the Recommendation of the Committee of Ministers of the Council of Europe of 11 January 2006 Rec(2006)2 “European Prison Rules” (hereinafter – the European Prison Rules) are recognized as authoritative sources for establishment of the minimum extent and content of rights of the convicts (*see: Judgment of 21 October 2008 by the Constitutional Court in the case No. 2008-02-01, Para 9.2 and Judgment of 2 December 2009 in the case No. 2009-07-0103, Para 14*).

Section 72 of the Minimum Standard Provisions and Section 26.7 of the European Prison Rules provide that the organization and methods of work in the institutions shall resemble as closely as possible those of similar work in the community in order to prepare prisoners for the conditions of normal occupational life. Likewise, it is indicated in the above mentioned documents that adequate and fair remuneration shall be paid to the convicts for their work (Section 76 of the Minimum Standard Provisions and Section 26.10 of the European Prison Rules).

9.2. However, in the summary of the Employment Concept, the suggested 1st version that was supported by the Cabinet of Ministers provides that employment system of the convicts is formed similarly to that of the common society as far as possible by preserving the main employment provisions and at the same time defining the convicts as a different category of employees who, due to their specific status, shall be established different employment provisions, including a lower minimum wage. Gaining of income that is assured in case of employment is only an additional motivation for the convicts to get involved in one of the elements of re-socialization process, namely, employment (*see: The Confirmed Concept of Re-socialization of Persons Sentenced with Deprivation of Liberty confirmed by 29 July 2010 Cabinet of*

Ministers Order No. 443, Source: <http://polsis.mk.gov.lv/view.do?id=3438>, consulted on 18 May 2011).

Consequently, the Constitutional Court shall assess whether the legislator had the authorization to establish the minimum wage for employed convicts that is by 50 per cent less than the minimum monthly wage established in the State.

10. The Constitutional Court has several times assessed legal norms regulating employment of the convicts.

10.1. The Constitutional Court has recognized that the State is not obligated to relate the rights and social guarantees established in the common legal labour relations to the convicts that are employed during the service of sentence of deprivation of liberty. **Employed inmates and employees who are not in places of imprisonment do not enjoy equal and comparable conditions. It should be taken into account that the convicts are employed for other purposes if compared to persons living and working in freedom; moreover, they serve their sentence of a committed crime. Consequently, work in a place of imprisonment must serve for re-socialization of inmates for life in the society rather than for gaining profit** (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14.3*).

However, as to the right of the convicts to a paid vacation, the Constitutional Court has indicated that this right can be restricted (for instance, by providing less vacation days if compared to what has been established in the Labour Law), but these rights cannot be denied in their terms (*see: Judgment of 21 October 2008 by the Constitutional Court in the case No. 2008-02-01, Para 11.3*).

The Constitutional Court agrees with the opinion expressed in the reply that employed convicts who serve their sentence in closed and partially closed prisons do not enjoy equal and comparable conditions even if compared with those employed convicts who serve their sentence in open prisons. When establishing several penalties to the

convicts, the Coda also provides a different amount of rights. The difference between the two groups of above mentioned persons manifests itself in the level of re-socialization. The convicts who serve their sentence in open prisons are at the final stage of their penalty when the necessity to approach the social life becomes urgent. These convicts can work outside the territory of a prison. Such regulatory framework ensures conditions similar to those when living in freedom for the convicts to be able to successfully re-socialize. Therefore these convicts have been established the same minimum wage as the minimum monthly wage established in the State. Also in the annotation to the draft law “Amendments to the Latvian Sentence Execution Code”, by means of which the Code was supplemented by the Contested Norm, it has been indicated that such condition would additionally motivate the convicts to develop themselves in the framework of the progressive sentence system and get involved in re-socialization for them to be sooner transferred to open prisons (*see: Case materials, pp. 66*).

10.2. By means of the Judgment of 21 November 2005, the Constitutional Court recognized Section 1 of 22 April 2004 Cabinet of Ministers Regulation No. 417 “Amendments to the Cabinet of Ministers February 19, 2002 Regulations No. 74 “The Payment Procedure for the Labour of Inmates at the Institutions of Imprisonment”” as non-compliant with Article 64 of the Satversme because the minimum wage of the convicts has not been established by means of a legal norm adopted according to proper procedure, namely, a law.

Contrary to the opinion of the Applicant, it does not follow from the above mentioned judgment of the Constitutional Court that the legislator would not have the right to establish, in a law a lower wage to the convicts than the minimum monthly wage established in the State. Quite the opposite – the judgment *expressis verbis* includes a suggestion that the legislator would established another minimum wage for the convicts: : „Before the legislator has legally and politically decided that a different wage may be determined for work of the same importance or quality, accomplished by the convicted persons as compared with persons, employed under contracts; and before the legislator

has authorized the Cabinet of Ministers to determine such wage, the Cabinet of Ministers is not competent to determine different minimum wage for the convicted persons” (*see: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 11*).

10.3. The Constitutional Court concludes that Article 107 of the Satversme does not commit the legislator to establish a similar minimum monthly wage to all employees without exception. Taking into account the fact that the employed convicts who serve their sentence in closed or partially closed prisons do not enjoy equal and comparable conditions if compared to those who serve their sentence in an open prison, the principle of equality admits and even requires a different attitude towards these groups of persons (*to compare: Judgment of 26 November 2002 by the Constitutional Court in the case No. 2002-09-01, Para 3.1 of the Findings*).

Consequently, the legislator does have the right to establish a lower minimum wage to certain groups of persons if compared to the minimum wage established in the State if it has a legitimate aim and the principle of proportionality has been observed.

11. The Saeima indicated that the Contested Norm *expressis verbis* includes two criteria, based on which the legislator established the wage of the convicts, them being work fulfilled by the convict and aims of re-socialization.

11.1. Work is an indispensable source of human self-respect and self-actualisation in a democratic society that is based on the basic principle of market economy. By putting one’s knowledge, competence and skills in work, a person earns financial resources needed for meeting his or her physiological, social and cultural needs (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14.2*).

Pursuant to the Re-socialization Concept, the purpose of sentencing with deprivation of liberty is to effectively apply all punishment elements to a convict within the term of execution of a court decision by thus assuring re-socialization of the convict and his or her lawful behaviour after release from a prison. Re-socialization is a body of measures for correction of social behaviour and social rehabilitation that is aimed at facilitation of lawful behaviour, formation of socially positive perception of values amount the convicts and reaching of the sentencing with deprivation of liberty. Employment of the convicts is one of the main measures for social rehabilitation of the convicts (*see*: “The Confirmed Concept of Re-socialization of Persons Sentenced with Deprivation of Liberty” confirmed by the Order of 9 January 2009 by the Cabinet of Ministers No. 7, pp. 6, 7 and 20, Source <http://polsis.mk.gov.lv/view.do?id=2892>, consulted on 18 May 2011).

However, it has been indicated in the Employment concept that during the period spent by a person in a prison, he or she loses its abilities and professional skills; moreover, during this period, request in the labour market changes. Therefore it is necessary to assure re-qualification. Employment during serving one’s sentence and employment after are closely related. Therefore it is necessary that employment in prisons would be facilitated as far as possible by thus helping the convicts to preserve their social and professional skills that would be necessary when looking for work when in freedom. It is important for the work to have properties of social usefulness and it would facilitate the convicts to ethical and purposeful actions. Therefore employment in prison should be related with social benefit by making it reasonable in the eyes of the society and the convicts (*see*: *Employment Concept*, pp. 3).

11.2. Employment of the convicts is one of the most important aspects of re-socialization of the convicts, as it is mentioned in the Minimum Standard Provisions and the European Prison Rules.

Pursuant to Section 6 of the European Prison Rules, all detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of

their liberty. However, Section 26 of the above mentioned document, like Section 71 and 72 of the Minimum Standard Regulations provides that prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment and prison authorities shall strive to provide sufficient work of a useful nature. As far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release. Execution of the penalty with deprivation of liberty should be organized by taking into account the fact that the convicts would have to return to the society; therefore they should be assured labour and training possibilities. Work should have a broadly developmental function for all prisoners: the requirement is that it should if possible enable them to increase their earning capacity serves the same function [*see: Commentary to Recommendation REC(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, pp. 3 and 12. Source: <http://www.coe.int/t/dghl/standardsetting/prisons/E%20commentary%20to%20the%20EPR.pdf>, consulted on 18 May 2011*].

Likewise, the objective of re-socialization is to ensure inmates a possibility to acquire skills that are needed to live with responsibility, as well as to make him or her refrain from any further criminal delinquencies. Employment of inmates is a positive element of labour organization, training and serving of the sentence in the place of imprisonment and a part of the process of re-socialization of the imprisoned person. First, work involves an inmate into regular everyday activities by thus usefully using his or her free time. Second, employment allows inmates not to lose, maintain or even improve their working skills and abilities, so that after serving the sentence it would be easier for them to integrate into the society and earn their living (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 14.2 and 18.2*).

By failing to assure re-socialization of the convicts, the aim of the punishment would not be reached and the level of public security would reduce because of criminal delinquencies again committed by persons having served their sentence with deprivation of liberty, as well as the amount of resources allocated from the budget to maintain the

convicts would even increase (*see: Re-socialization Concept, pp. 14*). Consequently, it is in the interests of the society to re-socialize as many convicts as possible.

Consequently, the legitimate aim of the Contested Norm is re-socialization of the convicts.

12. When assessing proportionality of the restriction of the fundamental right, the Constitutional Court shall assess, first, whether the means utilized by the legislator are suitable for achieving the legitimate objective or whether the measure selected assures reaching of the legitimate aim; second, whether such action is indispensable, i.e., whether the objective cannot be reached by other means that restrict the rights and legal interests of a persons at a lesser extent; third, whether the action of the legislator is proportionate or commensurate, i.e., whether the benefit gained by the society is greater than the losses caused to the rights and legal interests of a person (*see, e.g. : Judgment of 16 May 2007 by the Constitutional Court in the case No. 2006-42-01, Para 11*).

12.1. In the annotation to the draft law “Amendments to the Latvian Sentence Execution Code”, by means of which the Code was supplemented by the Contested Norms, it is indicated that, on the one hand, establishment of a lower minimum wage for the convicts is related with the aim of re-socialization, namely to help the convicted to obtain professional skills and knowledge, though, on the other hand, they ensure additional support to merchants who deal with certain difficulties when employing the convicts (*see: Case materials, pp. 65*). At the Saeima Defence, Internal Affairs and Corruption Prevention Committee meeting, when discussing the above mentioned draft law, it was also mentioned that, as another advantage of the Contested Norm is interest of merchants in the possibility to employ the convicts (*see: Case materials, pp. 58*). According to the information furnished by the Latvian Prison Administration, at present no such trend can be observed (*see: Case materials, pp. 106*).

However, due to the Contested Norm, they have succeeded in increasing the number of working places for the economical staff in prisons. Before the Contented Norm came into force, 149 convicts were employed, though after its coming into force the amount increased by 75 per cent and the actual number of employed convicts is 261 (*see: Case materials, pp. 106*). However, after coming into force of the Contested Norm, work as a measure of re-socialization became accessible to a greater number of convicts. If employed convicts were established the wage at the amount of the minimum monthly wage established in the State, then many convicts would not even have the possibility to work.

This fact draws attention to the fact that the Contested Norm is an appropriate means to reach the legitimate aim, i.e. to ensure re-socialization for as many convicts as possible, whilst the benefit gained by the society is greater than the restriction of the fundamental rights of a person.

12.2. When assessing whether the legitimate aim could be reached by other means that would restrict the rights of persons at a lesser extent, the Constitutional Court indicates that the legislator is conferred a wide freedom of action for formation and improvement of an effective re-socialization system (*see: Judgment of 14 June 2007 by the Constitutional Court in the case No. 2006-31-01, Para 18.1*).

It should also be taken into account that wage of a person living in freedom having a paid work is both, remuneration for the work done and source of subsistence that ensures maintenance of the person and his or her family for a certain period. The Constitutional Court has already concluded that the term “the minimum wage established by the State” included in Article 107 of the Satversme is related to the aim to establish such minimum wage that would be sufficient for meeting basic needs (dwelling, food, provision, clothing and other expenses) (*see: Judgment of 14 Jun 2007 by the Constitutional Court in the case No. 2006-31-01, Para 10*). However, prisons are maintained by means of State budget resources, and Section 77 of the Code establishes the minimum to meet material and everyday needs of a convict. Consequently, convicts

do not have to spend their wage to cover a range of costs for their maintenance. Therefore wage of the convicts can differ from the wage received by persons living and working in freedom.

In this case, measure that would restrict the fundamental rights of a person would be such regulatory framework that would establish the minimum wage of the convicts at the level of the minimum monthly wage or the one that is greater than 50 per cent of the minimum monthly wage established in the State. However, it follows from case materials that, when adopting the Contested Norm, proportionality of the restriction of the fundamental rights following from the Contented Norm has been assessed. In the letter of 20 May 2010 of the Ministry of Justice No. 1-11/2559 submitted to the Saeima Defence, Internal Affairs and Corruption Prevention Committee, one can find substantiation for fairness and proportionality of the legal regulatory framework establishing the wage of the convicts at the amount of 50 per cent of the minimum monthly wage established in the State. According to the Ministry of Justice, such amount of the minimum wage of the convicts is optimal, on the one hand, for the convicts to be able to receive fair remuneration for the work done and, on the other hand, to facilitate their willingness to get involved in the re-socialization process. It is even indicated in the above mentioned letter that, before coming into force of the Contested Norm, the normative regulatory framework that established the wage of the convicts at the amount of the minimum monthly wage established in the State put employed persons living and working in freedom in an unequal situation if compared with employed convicts (*see: Case materials, pp. 78 – 79*). Consequently, it can be regarded that the legitimate aim cannot be reached by other measures that would restrict the fundamental rights of persons at a lesser extent.

However, the Contested Norm does restrict fundamental rights of certain persons, including those of the Applicant. Still, such regulatory framework assures labour possibilities for a larger number of convicts and does comply with the interests of the

society in respect to re-socialization of the convicts. The right of employed convicts to receive remuneration are not denied, it is only restricted.

12.3. The minimum monthly wage of employed convicts is bound to the minimum monthly wage established in the State. Such solution does comply with the concept of employment, pursuant to which employment of the convicts is related with the employment system functioning in the society. The legislator could also choose another solution, namely, in the Code, it could *expressis verbis* establish the minimum wage for the convicts or to authorize the Cabinet of Ministers to do so without binding the minimum wage of the convicts to the minimum monthly wage established in the State.

The solution selected by the legislator shall be regarded as a method of legal technique to, first of all, bind the minimum wage of the convicts with the common trends of national employment policy and labour market and, second, to avoid the necessity to often amend laws of Cabinet of Ministers regulations. The Constitutional Court holds that such solution assures effective implementation of the state power (*to compare: Judgment of 21 November 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 7*).

Consequently, the restriction of the fundamental rights that follows from the Contested Norm is proportional and the Contested Norm does comply with Article 107 of the Satversme.

The Ruling

Based on Article 30 – 32 of the Constitutional Court Law, the Constitution Court

h o l d s:

Section 51 (13) indent 1 of the Latvian Sentence Execution Code does comply with Article 107 of the Satversme of the Republic of Latvia.

The Judgment is final and not subject to appeal.

The Judgment shall come into force on the date of publishing it.

Presiding Judge

G. Kūtris

Translated by E. Labanovska, translator of the Constitutional Court