



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT ON BEHALF OF THE REPUBLIC OF LATVIA Riga, June 14, 2007 in Case No. 2006-31-01

The Constitutional Court of Republic of Latvia, composed of the Chairman of the Court session Gunārs Kūtris, as well as the justices Kaspars Balodis, Aija Branta, Juris Jelāgins, Uldis Ķinis and Viktors Skudra, having regard to the constitutional claim of Andis Meirāns, under Article 85 of the Satversme (Constitution) of the Republic of Latvia and Item 1 of Article 16, Item 11 of the first part of Article 17, Articles 19.² and 28.¹ of the Constitutional Court Law, on May 15, 2007 at the Court session in writing examined the case

„On Compliance of the Second Part of Article 55 of the Code on the Execution of Sentences with Article 91 and 107 of the Satversme of the Republic of Latvia”

The Constitutional Court has established

1. On September 7, 2006, the Saeima of the Republic of Latvia (hereinafter – the Saeima) passed the amendments to the Code on Execution of

Sentences (hereinafter – the Code). By these amendments, the legislator has considerably changed the regulation of employment of persons sentenced to deprivation of liberty, inter alia providing for wage deduction.

The Second part of Article 55 of the Code provides: “A deduction shall be made to the part of the wage paid to cover the expenses that are related to maintenance of prison inmates. The amount of this deduction shall be 50 percent from the national minimum monthly wage.”

2. The submitter of the constitutional complaint Andis Meirāns (hereinafter – the Submitter of the application) asks to recognize the second part of Article 55 of the Code (hereinafter – the contested provision) as being incompatible with Articles 91 and 107 of the Satversme (Constitution) of the Republic of Latvia (hereinafter – the Satversme).

The Submitter of the application draws attention to non-compliance of the contested provision with Article 91 of the Satversme, because inmates who are and those who are not employed in their place of imprisonment do not enjoy equal attitude. Deductions to cover those expenses that are related to maintenance of inmates are used for meeting the needs of all inmates. According to the Submitter of the application, the State should at first provide work for all inmates and only in such case making such deductions would be admissible.

The contested provision does neither complied with Article 107 of the Satversme, because the inmates do not receive the wage that is adequate to their labour and it is lower than the national minimum monthly wage.

3. The institution that passed the contested act, the Saeima, indicates in its response note that the contested provision complies with section 91 and 107 of the Satversme.

The Saeima explains: since the Submitter of the application holds that the contested provision provides for a different treatment when implementing the rights established in Article 107 of the Satversme, the compliance of the

contested provision with Articles 91 and 107 of the Satversme are to be assessed in interconnection.

The contested provision, according to the Saeima, does not affect the amount of the wage of an inmate, but it provides for a deduction with a particular objective. Hence, in this case, one has to investigate the validity of the deduction, rather than the wage rate.

It is emphasized in the response note: the argument of the Submitter of the application that employed and unemployed inmates enjoy equal and comparable conditions is evidently ungrounded. One should rather assess whether an employed inmate and other employees who are not imprisoned enjoy equal and comparable conditions.

The labour of inmates is to be regarded as socially useful activities, the primary objective of which is not gaining income in order to meet household needs, but provision of possibilities of re-socialization for inmates so that these persons would not lose their social skills and working abilities.

The labour of inmates is not regulated by the norms of the Labour Law; it is referable to inmates only by mediation of Article 52 of the Code. Therefore an employed inmate does not enjoy equal and comparable conditions if compared to other persons that are employed and are nor imprisoned.

Regulation of the wage of imprisoned persons in Latvia does not considerably differ from the regulations of other States. In other European States, too, the wage of inmates is considerably lower than that of other employees for an equal labour.

4. The State Audit Office of Latvia (hereinafter – the State Audit) informs that in the audit report “Ensuring of administration of the State budget programme “Places of Imprisonment” by the Latvian Prison Administration and Places of Imprisonment” drew attention to the fact that the amount of deduction provided for by law does not facilitate employment in the places of imprisonment because inmates lose their motivation to work.

There emerges a situation in the places of imprisonment that employed inmates pay a part of their maintenance expenses, whereas the inmates that are unemployed are kept by the State.

5. The Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) indicates that the contested provision does not comply with Article 91 of the Satversme.

The minimum wage is often related to the necessary expenses of a person, which is the primary objective of Article 107 of the Satversme, however this norms does not prohibit make deductions from the minimum wage. Since the inmates receive a state guaranteed food and health services, the contested provision, according to the Ombudsman, complies with Article 107 of the Satversme.

When assessing compliance of the contested provision with Article 91 of the Satversme, it is necessary to establish whether the persons employed in the places of imprisonment and in freedom enjoy equal and comparable conditions. Taking into account the regulation of the Code and the Recommendation Rec(2006)2 adopted by the Committee of Ministers of the Council of Europe on January 11, 2006 “On the European Prison Rules” (hereinafter – European Prison Rules), the Ombudsman concludes that persons that work in the place of imprisonment do not enjoy equal and comparable conditions if compared to persons employed in freedom.

However one has to assess additionally the fact whether the requirement for only the employed inmates to take part in covering maintenance expenses established by the contested provision does not violate the principle of equality established in Article 91 of the Satversme.

An employed inmate and an unemployed inmate enjoy equal and comparable conditions because all inmates serve their sentence for their criminal delinquencies. The contested provision provides for a deduction at the amount of 50 percent from the wage for covering maintenance expenses. However the inmates who receive a pension of incomes of other nature do not

have to participate in covering maintenance expenses. Therefore, according to the Ombudsman, one should that the persons in equal and comparable conditions enjoy different attitude.

When assessing compliance of the contested provision with the Satversme, one has to take into account that a small number of inmates are employed in Latvia, and this makes re-socialization of all inmates difficult and causes inequality among them. Just a small part of the inmates are employed, and they have to take part in covering expenses that are related to maintenance inmates. The normative acts do not provide for a possibility to make deductions from pensions or other incomes to cover the maintenance expenses in order to involve all inmates in covering their maintenance expenses.

A situation when an employed inmate takes part, by means of a part of his or her wage, in maintenance of other all persons in the respective place of imprisonment and amelioration of their living conditions causes inequality among inmates. Hence the contested provision is in conflict with Article 91 of the Satversme.

6. The Ministry of Justice of the Republic of Latvia indicates that the objective of the contested provision is making inmates participate in covering the expenses related to their maintenance. The contested provision simultaneously facilitates re-socialization and responsibility of inmates. By making deductions from the wage, the inmates are made socially jointly responsible for their stay in prison and for amelioration of the surrounding environment (social conditions), and thus responsibility is taught to inmates.

The Ministry of Justice emphasizes that the wording of the contested provision confers the Latvian Prison Administration the freedom of choice when deciding on the way how to spend deductions from the wage of inmates. However it also provides for restrictions of the freedom of action – the deductions can only be spent for expenses that are related to maintenance of inmates, rather than for the needs of the staff.

The Ministry of Justice holds that the contested provision complies with Article 91 of the Satversme. Labour of inmates is a socially useful activity, the objective of which is not gaining profit, but ensuring of possibilities of social rehabilitation for inmates so that these persons could re-socialize in the society after serving the sentence of deprivation of liberty.

The amount of the deductions, if compared to the actual amount of expenses for maintenance inmates, is insignificant, and it is as well commensurable with the wage of inmates. The Ministry of Justice admits that employed and unemployed inmates enjoy equal and comparable conditions. However the different attitude has an objective and reasonable grounds. If such deductions were provided for unemployed inmates, they could not be made due to absence of the respective incomes. Hence, after liberation from the place of imprisonment, a part of inmates would have a debt, which could encumber their re-socialization.

According to the Ministry of Justice, the contested provision facilitates participation of inmates in their maintenance and re-socialization. The regulation included in the Code favours social rehabilitation of employed inmates by improving their social and working skills, as well as by allowing the inmates earn additional financial resources for meeting their needs.

7. The Latvian Prison Administration informs that on March 13, 2007, there were 1377 employed inmates in the places of imprisonment (about 30 percent from the total number of inmates). 714 persons of the above inmates were employed in the economic service of the place of imprisonment.

In order to ensure a common application of the contested provision, the Latvian Prison Administration has elaborated methodological materials and submitted them to places of imprisonment. In total, LVL 127 673 were collected from the deductions from the inmate wages in 2006. These resources were spent on feeding expenses (93 percent out of the total sum of the collected deductions. i.e. LVL 118 870), purchase of medicinal products, chemicals, laboratory goods and medical tools (6 percent out of the total sum of

the collected deductions, i.e. LVL 7517), and for purchase of soft inventory and clothing (1 percent out of the total sum of the collected deductions, i.e. LVL 1286).

The Latvian Prison Administration emphasizes that application of the contested provision and the amount of a deduction has been affected by increase of the minimum wage in the State. Hence the amount of a deduction is to be reconsidered after the Constitutional Court of the Republic of Latvia prepares the judgment. In addition to this, the Ministry of Justice and the Latvian Prison Administration will commonly work at formation of non-material stimulation system in order to facilitate employment of inmates.

8. The State Probation Service emphasizes that the contested provision is just one of the components of implementation process of inmate re-socialization policy, which helps inmates get prepared for the life in freedom, inter alia by teaching them operate with financial resources.

The objective of the contested provision, according to the State Probation Service, is participation of inmates in covering their maintenance expenses.

The wage of inmates is an equivalent to the wage of free employees. Free persons also spend a part of their incomes on food, dwelling and different services. Therefore inmates, too, must participate in covering their maintenance expenses.

The Constitutional Court holds that:

9. Article 107 of the Satversme provides that “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”.

The Submitter of the application, in his constitutional complaint, asks to assess compliance of the contested provision with the rights to receive, for the work done, commensurate remuneration which shall not be less than the minimum wage established by the State with Article 107 of the Satversme.

10. It follows from Article 107 of the Satversme, that the State must establish, by means of normative acts, a minimum wage, and employers are not allowed to pay their employees a wage that is lower than the one established by the legislator (*see: Judgment of November 21, 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 6*).

The responsibility to establish a minimum wage in the State is also provided by international liabilities of Latvia. The third part of Article 23 of the Universal Human Rights Declaration provides that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. However Article 7 of the International Covenant on Civil and Political Rights guarantee the rights of person to remuneration which provides all workers, as a minimum, with a decent living for themselves and their families.

One can agree to the opinion of the Ombudsman 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. The objective of establishment of a minimum wage is to ensure a minimum amount of incomes, by means of which a person could cover his or her dwelling, food, provision, clothing and other expenses (*see: case materials, pp. 95*).

11. The International Labour Organization requires, in the first part of Article 2 of the Covenant of June 22, 1970 No. 131 “Concerning Minimum Wage Fixing”, that the Member States of the Covenant establish minimum wage by means of normative acts, and it could not be lowered. Hence the

amount of the minimum wage shall be determined by the law (*see: Judgment of November 21, 2005 by the Constitutional Court in the case No. 2005-03-0306, Para 6*).

Under the first part of Section 61 of the Labour Law a minimum wage shall not be less than the minimum level determined by the State. Whereas, the second and the third part of the above Law authorizes the Cabinet of Ministers to establish a minimum wage in the frameworks of a normal working time and minimum hourly wage rates, as well as the procedures for the specification and review of the minimum monthly wage.

The minimum monthly wage and the minimum hourly wage is established by the Regulation of October 17, 2006 by the Cabinet of Ministers No. 858 “Regulations Regarding Minimum Monthly Wage and Minimum Hourly Wage” (hereinafter – the Regulation No. 858). Under Section 2 of the above Regulation, the minimum monthly wage, in the frameworks of full working time, shall constitute LVL 120, but minimum hourly wage shall constitute LVL 0.713.

Section 5 of the European Prison Rules provides for the responsibility of the Member States to ensure, as far as possible, the same conditions for inmates as those that are enjoyed by persons in freedom. This principle is also referable to employment of inmates, namely, inmates are paid, as far as possible, the same wage which is paid for persons for an equivalent work done by persons that are employed in freedom.

The Code does not provide for a different minimum wage for inmates. Hence the minimum wage of inmate is established by the Regulation no. 858.

12. In order to assess compliance of the contested provision with Article 107 of the Satversme, it is first of all necessary to establish whether the contested provision includes the restriction of rights of persons guaranteed by Article 107 of the Satversme, namely, whether the contested provision violates the rights guaranteed by Article 107 of the Satversme (*see: Levits E. Cilvēktiesību piemērošanas pamatjautājumi Latvijā // Cilvēktiesības Latvijā un*

pasaulē. Dr.iur. Inetas Ziemeles redakcijā. Rīga: Izglītības soļi, 2000, pp. 281 – 282).

Under Section 107 of the Satversme, the wage for inmates may not be lower than the minimum wage established in the State. The contested provision provides for another minimum wage for inmates, which differs from the one established in the Section 2 of the Regulation No. 858 and does not relieve the employer from the responsibility to pay an inmate the minimum wage established in the State.

The Saeima has justly indicated that the contested provision does not affect the amount of the wage of an inmate, but it provides for a deduction that is made with a particular objective (*see: case materials, pp. 31*). Article 107 of the Satversme does not prohibit making deductions from the minimum wage (*see: Opinion of the Ombudsman, case materials, pp. 92*).

Since the contested provision does not regulate the amount of the wage, the legislator, when passing the contested provision, has not violated Article 107 of the Satversme.

13. Article 91 of the Satversme 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.”

13.1. Although the application includes a claim to assess compliance of the contested provision with Article 91 of the Satversme, it still follows from the application that one has to assess compliance of the contested provision only with the first sentence of Article 91 of the Satversme, which guarantees equality of all persons. This means that, in the frameworks of this case, the contested provision is to be analyzed in the context of the principle of equality, rather than in the context of prohibition of discrimination.

13.2. The principle of legal equality prohibits state institutions to pass such norms that, without reasonable grounds, permits different attitude towards persons that enjoy equal and comparable conditions (*see:: Judgment of April 3,*

2001 by the Constitutional Court in the case No. 2000-07-0409, Concluding Part, Para 1). The principle of equality must guarantee existence of common legal procedure. Namely, its task is to ensure the fact that such claims of a legal state as comprehensive attitude towards all persons and a law to be implemented without any privileges are implemented. It guarantees full impact of a law, objectivity and impassivity of its application, as well as the fact that no one is allowed not to observe instructions of a law (*see: Judgment of September 15, 2005 by the Constitutional Court in the case No. 2005-02-0106, Para 9.1*). However unity of such legal procedure does not imply levelling, since “equality allows a differentiated approach, if it can be justified in a democratic society” (*see: Judgment of June 26, 2001 by the Constitutional Court in the case No. 2001-02-0106, Concluding Part, Para 4*).

Hence the principle of equality allows and even requires a different attitude towards persons that enjoy different conditions, as well as it permits a different attitude towards the persons that enjoy equal conditions, if it has an objective and reasonable grounds (*see: Judgment of April 3, 2001 by the Constitutional Court in the case No. 2000-07-0409, Concluding Part, Para 1*).

A different attitude does not have an objective and reasonable grounds if it has no legitimate objective or if there is no proportional (commensurate) relations between the means selected and objectives set (*see: Judgment of December 23, 2002 by the Constitutional Court in the case No. 2002-15-01, Concluding Part, Para 3*).

13.3. In order to assess whether the contested provision complies with the first sentence of Article 91 of the Satversme, one has to establish:

first, whether there are persons (groups of persons) that enjoy equal and comparable conditions;

second, whether the contested provision provides for an equal or different attitude towards these persons;

third, whether such attitude has an objective and reasonable grounds, namely, whether there is a legitimate objective and whether the principle of proportionality is observed.

14. In order to find out what persons or groups of persons enjoy, if at all, equal and, according to certain criteria, comparable conditions, it is necessary to establish the distinguishing trait of such group.

14.1. The Submitter of the Application indicates that all persons that are employed enjoy equal and comparable conditions. The condition that some persons serve their sentence of deprivation of liberty does not place these persons in an unequal and non-comparable situation with the persons who are employed and are not sentenced to deprivation of liberty.

14.2. In this case it is necessary to assess the objectives that are reached by a remunerated labour in freedom and in places of imprisonment.

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.

In places of imprisonment, persons are employed due to other objectives. The Saeima justly indicates in its response note that labour of inmates is to be regarded as a socially useful activity, the primary objective of which is provision of possibilities of social rehabilitation for inmates rather than earning of incomes for ensuring household needs so that these persons would not lose their social skills and working abilities (*see: case materials, pp. 31*).

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. Employment of inmates ensures security in places of imprisonment and decreases possibility of mutual violence and disciplinary violations.

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: Zahars V. Kriminālsodu izpildes tiesības. Vispārīgā daļa. Rīga: Latvijas Policijas akadēmija, 1999, pp. 44 – 52; Coyle A. A Human Rights Approach to Prison Management. Handbook for prison staff. London: International Centre for Prison Studies, 2002, pp. 88*). As it is established by the fourth part of Section 71 of the United Nations Organization Minimum Standard Provisions for Custody Regime of July 31, 1957, employment of inmates has to be such that maintains or increases the possibility of inmates to earn their living after serving the sentence. The Federal Constitutional Court of Germany has also concluded that employment of inmates facilitates their professional integration into the society and ensures the necessary economic basis in future (*see: BVerfGE 98,169*).

Since employment of inmates is not comparable with legal labour relations that exist outside places of imprisonment due to the different objectives, the State is obligated to regulate the issues of employment of inmates separately. When regulating employment of imprisoned persons, the State must, as far as possible, guide itself by the recommendations elaborated by the United Nations Organization and the Council of Europe in this respect.

14.3. Having regard to the objective of employment of inmates, the Constitutional Court agrees to the opinion of the Saeima that employed inmates and employed persons that are free can not be regarded as the groups of persons that enjoy equal and comparable rights.

Employment of inmates has a different objective, and due to this reason the State is not obligated to relate the rights and social guarantees established in the common legal labour relations to the inmates that are employed during the service of sentence of deprivation of liberty. Taking into account the particular objectives of employment of inmates and needs of inmates, they are to be provided with different rights and social guarantees. Work in a place of imprisonment must serve for re-socialization of inmates for life in the society

rather than for gaining profit. Such attitude for employment of inmates is established by Section 26.8 of the European Prison Rules, namely, “although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose”.

Employed inmates and employees who are not in places of imprisonment do not enjoy equal and comparable conditions.

15. The Submitter of the application has indicated that the contested provision provides for a different attitude towards employed and unemployed inmates.

The Ombudsman, too, holds: in order to investigate compliance of the contested provision with the first sentence of Article 91 of the Satversme, one has to assess the claim established in the contested provision to make only employed inmates participate in covering maintenance expenses (*see: case materials, pp. 98*).

16. Employed inmate and unemployed inmate serve their sentences for criminal delinquencies according to the order established in the Code. The inmates have to observe the procedure established in Chapter 7 of the Code. However Chapter 13 of the Code provides for the order of meeting material and household needs.

Item 3 of Article 4 of the Code emphasizes in particular that all inmates are equal in front of law, however Item 2 of the same Article prohibits discrimination of inmates as to their race, nationality, native language, sex, social and material position, political considerations, religion and other criteria.

Hence all inmates enjoy equal and comparable conditions.

17. The contested provision established that employed inmates have to participate in covering expenses that are related to maintenance the inmates.

For the sake of reaching the objective, the contested provision establishes that a deduction of a certain amount is made from the wage of inmates.

However the normative acts do not provide for a duty of unemployed inmates to participate in covering expenses that are related to maintenance inmates. However these inmates can be divided into two categories:

first, inmates who have no regular incomes of other nature;

second, inmates who have incomes of other nature, for instance, a pension.

One can agree to the opinion of the Ministry of Justice that a situation is possible that many inmates would have no financial resources for fulfilling the duty of participating in covering expenses related to his or her maintenance if demanded. Hence inmates would accumulate a debt, which would encumber their return to the society and possibilities to earn sufficient living (*see: case materials, pp. 117*).

However one has to take into account the fact that a part of inmates can have regular incomes of other nature (*see: Opinion of the Ombudsman, case materials, pp. 98*) and these persons are not obligated to partially cover such maintenance expenses by the contested provision.

Hence a deduction is made from one kind regular incomes employed inmates, but no such deduction is made from regular incomes of other kind of unemployed inmates.

Hence the contested provision established a different attitude towards the two groups of inmates regarding covering maintenance expenses.

18. In order to establish whether this different attitude has an objective and justified basis, one has to establish whether it has a legitimate objective.

18.1. The Federative Constitutional Court of Germany has emphasized that the Basic Law requires that, in places of imprisonment, an effective re-socialization is ensured. For reaching of this objective the legislator enjoys a wide freedom of action (*see: BVerfGE 98, 169*). Taking into consideration the

fact that the objective of the execution of sentences law of Latvia is to attain re-socialization of inmates, the legislator of Latvia is to be conferred a wide freedom of action for formation and improvement of an effective re-socialization system.

However the freedom of action of the legislator is not unrestricted. Freedom of action can be used only insofar as to ensure an efficient system of service of sentence and re-socialization, namely, the legislator is not allowed to create preconditions for ungrounded violation of the basic rights of imprisoned persons.

18.2. The deduction that is meant for a partial covering of expenses for maintenance of inmates has its own meaning in the process of re-socialization of inmates. Employment of inmates is a possibility to earn financial resources by working, as well as the duty to partially cover the maintenance expenses in the place of imprisonment provides a possibility to the inmates to manage their financial resources and to realize that they must cover their maintenance expenses by means of the earned money. Similarly an inmate is also involved in amelioration of living conditions.

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 (*see: BVerfGE 98,169*). Re-socialization in general and each its elements taken separately (employment of inmates, remuneration for the work done, duty to participate in covering maintenance expenses) serves for diminishing criminality, integration of inmates into the society and improvement of security in the society, as well as protection of lives, legal interests and rights of other persons.

Hence the deductions from the wage have a legitimate objective.

18.3. The first sentence of the contested provision generally establishes that deductions are made from the wage of inmates for partial covering of maintenance expenses of inmates. The contested provision clearly establishes for what purposes the collected resources are to be used. The Ministry of Justice indicates that, when elaborating the draft law, maintenance implied only

those expenses related to feeding of inmates, medicinal products, provision of hygiene goods and meeting of other household needs, but not maintenance of the staff (*see: case materials, pp. 106*). Such objectives of the resources are established in the methodological materials drawn up by the Latvian Prison Administration. It is established therein for what needs these deductions are to be used, namely, for feeding of inmates, purchase of clothing and medicinal products (*see: case materials, pp. 91 – 92*).

It is not established clearly enough in the normative acts whether these deductions are to be used for maintenance of all inmates in the frameworks of the budget of the place of imprisonment, or they are to be used for meeting the needs of the employed inmates. The Ombudsman has concluded that a different practice can be observed in this respect in different places of imprisonment (*see: case materials, pp. 98*).

The contested provision imperatively established the amount of a deduction by adding it to the minimum wage established in the State, rather than for actually earned wage or necessary expenses of maintenance of inmates. One also has to take into consideration the opinion of the Latvian Prison Administration that it would be necessary to decrease the amount of the deduction, since the minimum wage in the State has been increased and hence it follows that, at present, a higher deduction is made from the wage of employed inmates than it was planned (*see: case materials, pp. 86*).

The contested provision neither provides for a definite sum that would not be taken into account when making deductions, namely, it does not provide for fixing a certain untaxed minimum for meeting the needs of an inmate. In this respect, one should observe that the labour of inmates must be appropriately remunerated so that re-socialization would reach its objectives. The wage must create a conviction in the inmates about advantages of a regular work as the source of acquisition of resources also after their release from a place of imprisonment (*see: BVerfGE 98,169*).

Hence the regulation of the contested provision is to be improved.

18.4. Although a different attitude towards the persons that enjoy equal and comparable conditions could be justified, the regulation must serve for a definite legitimate objective – protection of other values of a constitutional rank.

The contested provision established that deductions for partial covering of maintenance expenses are to be made only from the wage of employed inmates. However it does not establish that such deductions are to be made from regular incomes of other inmates.

The Ombudsman, too, indicates that the contested provision causes a situation that an employed inmate, by means of deductions made from his wage, participates in maintenance of other imprisoned persons or amelioration of living conditions for persons who have other sources of incomes. Hence inequality is caused among inmates (*see: case materials, pp. 98*).

Such different attitude has no legitimate objective, namely, it is not necessary for protection of other persons and the democratic regime of the State, nor for protection of security, welfare and morality of the society.

Hence the contested provision is in conflict with Article 91 of the Satversme.

19. Under the third part of Article 32 of the of the Constitutional Court Law, any legal norm which the Constitutional Court has determined as incompatible with the legal norm of higher force shall be considered invalid as of the date of publishing the judgment of the Constitutional Court, unless the Constitutional Court has ruled otherwise.

Since deductions from the wage of employed inmates for partial covering of maintenance expenses is a relevant element of the system of re-socialization, the legislator needs to come in order to eliminate non-compliance of the contested provision with the Satversme to preserve deductions as such.

The Substantive Part

Under Articles 30 – 32 of the Constitutional Court Law, the Constitutional court

holds:

1. The second part of Article 55 of the Code on the Execution of Sentences of the Republic of Latvia is in conflict with Article 107 of the Satversme of the Republic of Latvia.

2. The second part of Article 55 of the Code on the Execution of Sentences of the Republic of Latvia is in conflict with Article 91 of the Satversme of the Republic of Latvia and invalid from December 15, 2007.

The Judgment is final and not subject to appeal.

The Judgment takes effect as of the day of publishing it.

The Presiding judge

G. Kūtris