THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, November 21, 2005

JUDGMENT
in the name of the Republic of Latvia

in case No. 2005-03-0306

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš as well as the justices Andrejs Lepse, Romāns Apsītis, Aija Branta, Ilma Čepāne, Juris Jelāgins and Gunārs Kūtris

on the basis of the constitutional claim by Armands Altmanis, Aivars Bajārs, Uģis Finsters, Aigars Stāmers and Igors Ševčenko

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 3), 17 (Item 11 of the first Paragraph), 19^2 and 28^1 of the Constitutional Court Law

in written proceedings at November 1, 2005 Court session reviewed the matter

"On the Compliance of the Cabinet of Ministers April 22, 2004 Regulations 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" with Articles 91 and 107 of the Republic of Latvia Satversme and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms"".

The establishing part

1. In Section 51 of the Latvian Penalty Execution Code the legislator has incorporated the legal norm, which establishes that "for the accomplished labour the convicted persons shall be paid under the procedure determined by the Cabinet of Ministers".

On the basis of the authorization, included in this legal norm, on February 19, 2002 the Cabinet of Ministers adopted Regulations No. 74 ” The Payment Procedure for the Labour of Inmates at the Institutions of Imprisonment” (hereinafter – Regulations on Payment for Labour). In Item 5 of the above Regulations the Cabinet of Ministers determined that ”monthly salary of the convicted persons shall not be less than the minimum monthly salary determined by the Cabinet of Ministers, if the convicted person has worked the estimated time of labour, established in Section 52 of the Latvian Penalty Execution Code”.

On February 22, 2004 the Cabinet of Ministers passed Regulations 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””. By Item 1 of the Regulations (hereinafter – the impugned norm) the Cabinet of Ministers made several amendments to the Regulations on Payment for Labour.

By the impugned norm the Cabinet of Ministers amended Item 5 of the Regulations on Payment for Labour, determining that ”the minimum monthly salary of the convicted person and the minimum hourly tariff rate shall not be less than 40% of the State minimum monthly salary (hourly tariff rate), determined by the Cabinet of Ministers”. Simultaneously with the impugned norm the Cabinet of Ministers supplemented Item 4 of the above Regulations, determining that ”the convicted person for his/her work at the institution, financed from the budget shall receive salary in the amount of 40% from the salary of the monthly salary (hourly tariff rate) of the employee, which has been calculated in conformity with the normative acts, determining the payment for working hours (salary) of the state financed budget institutions employees.

2. **The submitters of the constitutional claims –** Armands Altmanis, Aivars Bajārs, Uģis Finsters, Aigars Stāmers and Igors Ševčenko – request to declare the impugned norm as unconformable with Articles 91 and 107 of the Republic of Latvia Satversme (hereinafter – the Satversme) as well as with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Human Rights Convention).

   The submitters of the constitutional claims hold that determination of differentiated payment for labour, which is of equal significance (quality) is at variance with the principle of fair remuneration for labour, fixed in the Satversme and international instruments; namely, to their mind one of the constituent parts of the above principle – fair and equivalent payment for labour of equal significance - is not observed. They state that - when determining lower payment for labour of the

convicted persons than to persons, who perform it on the basis of the labour contract – the Cabinet of Ministers has violated Article 91 of the Satversme.

The submitters of the constitutional claim point out: even though the objective, which the Cabinet of Ministers has wanted to reach by passing the impugned norm, is clear, namely, to stimulate employment of the convicted persons, the means chosen for reaching it are not proportionate and well-grounded. It is stressed in the constitutional claims that the amount of money, which is being paid to the convicted persons for their work, is disproportionately small. Because of the above the submitters of the claims consider work, carried out in the institutions of imprisonment, to be forced labour and punishment, degrading the dignity of the person. Financial difficulties of the administration of the institutions of imprisonment and the expensiveness of provisions for the convicted persons to their mind are not a fair justification for non-observance of fundamental rights of the person. Institutions of imprisonment are State budget institutions and they have no right to cover the budget deficiency with the money, earned by the convicted persons.

The submitters of the constitutional claims hold that the regulation, included in the impugned norm will restrict their rights also after serving the sentence – payment for their labour, determined by the impugned norm influences also the amount of unemployment benefit and the amount of old age pension.

3. **The Cabinet of Ministers –** the institution, which has passed the impugned act – in its written reply points out that the impugned norm complies with Articles 91 and 107 of the Satversme and Article 14 of the Human Rights Convention and requests the Constitutional Court to declare the claim as ungrounded and reject it.

The Cabinet of Ministers explains that the convicted persons have a specific legal status, which is determined by separate and different normative regulation. Neither general legal labour relations as well as the requirements to the employees, nor social guarantees may be automatically attributed to the convicted persons. The legal status of the convicted persons in the Republic of Latvia, inter alia, also the procedure of employing of the convicted persons is determined by the Code. This normative act is outdated and does not include all the needed normative regulation. Therefore, to the moment of adoption of a new Law, legal norms, which refer to employees, who are free and are engaged in wage labour, are also applied to many issues, connected with the employment of the convicted persons. The Cabinet of Ministers in

its written reply has especially stressed that the norms of the Labour Law are not directly but analogically applied to the convicted persons.

The Cabinet of Ministers points out: the first Paragraph of Section 61 of the Labour Law establishes that a minimum wage shall not be less than the minimum level determined by the State. In its turn the State ensures subsistence wage determined by the State for the convicted persons in another way than for the employees, who are free and are employed in wage labour. Because of the above circumstance labour by convicted persons has another social function.

The aim of the labour as a socially useful activity for the convicted persons is the possibility not to lose, maintain or even increase one's working skills and abilities so that after serving the sentence it would be easier to integrate in the society and earn subsistence wage. In difference from a free employee the convicted persons are provided for by the State and they themselves do not have to ensure meeting the requirements of their mode of life. The convicted persons are provided for on State funds with a floor space, feeding, public utilities and the minimum of the State determined health care. The State budget subsidy for maintenance of one convicted person is 123 lats a month, that is, it is greater than the minimum monthly wage determined by the Cabinet of Ministers.

The Cabinet of Ministers also indicates that the Standard Rules for the Prison Inmates Regime, elaborated by the United Nations Organization do not require that the level of payment for the inmates labour shall comply with level of remuneration for labour outside of places of imprisonment. Analysis of the practice of other European states also indicates that remuneration for labour accomplished by the convicted persons is considerably lower than that paid to other society members for equal labour.

The Cabinet of Ministers stresses that the convicted persons are neither directly nor indirectly discriminated by the regulation of the impugned norm. The convicted persons are not in equal actual and legal circumstances with the other employees – persons, who accomplish wage labour for the minimum salary and are free. The convicted persons have a specific legal status and need a different normative regulation; thus it is permissible and even necessary to have a differentiated attitude and a different normative regulation. The Cabinet of Ministers points out that in this case the prohibition of discrimination with regard to other inhabitants shall be taken into consideration. The Cabinet stresses that the convicted persons, if they received remuneration for their labour in the full amount (in conformity with the minimum salary determined by the Cabinet of Ministers) would be in much better material conditions than the law-submissive inhabitants, who receive the minimum salary.

4. **The Latvian Centre of Human Rights and Ethnic Studies** (hereinafter – LCHRES) has submitted a viewpoint on the conformity of the impugned norm with Articles 91 and 107 of the Satversme and Article 14 of the Human Rights Convention. LCHRES points out that neither the national nor the international legal norms establish that the payment for labour of the convicted persons shall be equal with the payment for labour of other persons.

   One of the reasons for passing of the impugned norm is the possibility for the Administration of Places of Imprisonment to receive finances for paying benefits and compensation to their employees. The impugned norm to their mind has no legitimate aim, as one cannot regard labour of inmates for the improvement of the financial position of the employees of the Administration of Places of Imprisonment to be the aim.

   LCHRES stresses that the impugned norm influences not only the convicted persons. It should be taken into consideration that the determined labour payment noticeably decreases the possibilities for the victims to receive compensation for the losses, arising as the result of the crime; as well as the possibilities for the convicted persons to pay for livelihood of the children. It is also mentioned that as a matter of fact just because of shortage of finances Article 118, Item 2.4 of the Code and the Cabinet of Ministers October 12, 1999 Regulations No. 351 ”Regulations on the Financial Aid to the Persons, who are Released from the Places of Deprivation of Liberty” are not implemented.

   The employment strategy of the Latvian prisons shall be directed not only to increasing the number of working places, but also to increasing of the wages. Bigger wages serve for the inmates as an impetus to start working, which at the same time will facilitate the understanding of these persons about the advantages of employment and will improve discipline and order at the places of imprisonment.

The concluding part

5. Article 107 of the Satversme determines 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”. From the constitutional claims follows that the Constitutional Court is requested to assess whether the impugned norm complies with the right incorporated in Article 107 of the Satversme i.e. to receive commensurate remuneration, which is not less than the minimum wage established by the State.

6. With the impugned norm the Cabinet of Ministers has established the minimum amount of the wage to be paid to convicted persons. For the above regulation to comply with Article 107 of the Satversme, it is first of all necessary that the law, passed under appropriate procedure, shall determine it. Such a conclusion is connected with the circumstance, that 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.

Taking into consideration the above authorization, included in the Satversme, the amount of the minimum wage shall be determined by the law. The principle of separation of the State power, incorporated in Article 1 of the Satversme and Article 64 of the Satversme, establish that the Saeima and also the people have the right to legislate, in accordance with the procedures, and to the extent, provided for by the Satversme. In cases, anticipated in Article 81 of the Satversme, the Cabinet of Ministers may also make use of the legislative rights (*sk. Satversmes tiesas 2001. gada 3.aprīļa spriedumu lietā No. 2000-07-0409 secinājumu daļas 5.punktu; see the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409;Item 5 of the concluding part).*

7. However the principle of separation of power, which is included in Article 1 of the Satversme, shall not be dogmatically and formally perceived but has to be commensurable with the aim to avert centralization of power into ”the hands” of one official or one institution (*sk. Satversmes tiesas 1999. gada 1.oktobra sprieduma lietā No. 03-05(99) secinājumu daļas 1. punktu; see the Constitutional Court October 1, 1999 Judgment in case No. 03-05(99); Item 1 of the concluding part).* In the legal science it is recognized that particular deviations from the principle of separation of power may be regarded as admissible, if it makes the realization of functions of the state power more efficient, strengthens independence of a certain institution of the State power from another power or secures functioning of mutual balance and counterbalance system of the three powers [*sk.: Levits E. Normatīvo tiesību aktu demokrātiskā leģitimācija un deleģētā likumdošana: teorētiskie pamati// Likums unTiesības. 4. sējums, 2002, No. 9(37), 263.lpp.; Levits E. Democratic legitimisation and delegated legislature of normative acts: theoretical basis// The Law and the Rights, Vol.4, 2002, No.9(37), p.263]*.

The requirement for the legislator himself to solve all the issues connected with the life of the state, in the complicated conditions of the contemporary society has become unreal. The legislator has no possibility to decide in the legislative way all the issues to which regulation is the necessity. Such activity of the legislator very often would be belated, because the process of legislation is time consuming and ponderous. To secure a more efficient implementation of the state power, deviation from the requirement that the legislator has to solve all the issues is admissible. The above efficiency may be reached if the legislator in the process of legislature takes decisions on the most significant issues, but delegates elaboration of more detailed regulations and technical norms, necessary for implementation of the laws in practice, to the Cabinet of Ministers or other State institutions. The above procedure not only makes the process of legislation more effective, as the legislator does not have to spend time on solving technical issues, but also allows more quickly and adequately to react on the necessity of amending of normative regulation. In elaboration of technical norms the Cabinet of Ministers or other authorized State institutions are in most cases more competent than the legislator and the process of adopting of decisions is not so complicated (*see: Sajo A. Limiting Government. An introduction to Constitutionalism. Budapest: Central European University Press, 1999, p.161).*

8. The Constitutional Court has already repeatedly pointed out that the fundamental rights, established by the Satversme, may be restricted or specified not only on the basis of the laws, adopted by the Saeima or by the people, but also on other generally binding (external) normative acts, if only these acts comply with certain criteria (*sk. Satversmes tiesas 2002.gada 20. maija spriedumu lietā Nop. 2002-01-03, Satversmes tiesas 2002.gada 22. oktobra spriedumu lietā No. 2002-04-03 secinājumu daļas 2.-4. punktu, Satversmes tiesas 2004.gada 23. aprīļa spriedumu lietā No. 2003-15-0106 secinājumu daļas 8.punktu; see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03; the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03; Items 2-4 of the concluding part; the Constitutional Court April 23, 2004 Judgment in case No. 2003-15-0106; Item 8 of the concluding part).*

The Cabinet of Ministers has established the minimum wage for the convicted persons on the basis of Section 51, the fifth Paragraph of the Code, which establishes that ”the convicted persons shall be paid for work done under the procedure determined by the Cabinet of Ministers”. It means that the Cabinet of Ministers has regulated the above issue on the basis of the specific authorization of the Saeima.

Provisions of the specific authorization (delegation) have generally been established in Section 14 of the Law "The Structure of the Cabinet of Ministers". Item 2 of the first Paragraph of this Section determines that the Cabinet of Ministers may only issue normative acts –regulations, "if the law specifically authorizes the Cabinet of Ministers to do so. The authorization shall formulate the main directions of the regulations' content".

9. To regard the impugned norm as a normative act, issued under duly procedure, which specifies the requirements of Article 107 of the Satversme on the minimum wage, the Cabinet of Ministers Regulations shall comply with several provisions.

First of all for issuing Regulations the Cabinet of Ministers shall have a specific authorization of the legislator, which has been incorporated in the norm of the law. The main directions of the regulations shall be formulated in the authorization.

Secondly, taking into consideration the fact that the Cabinet of Ministers issues Regulations to promote implementation of laws, norms, which cannot be regarded as remedies for implementation of the norm of the law, shall not be included in the Regulations (*sk. Satversmes tiesas 2001. gada 3. aprīļa sprieduma lietā No. 2000-07-0409 secinājumu daļas 5. punktu; see the Constitutional Court April 3, 2001 Judgment in case No. 2000-07-0409; Item 5 of the concluding part).*

Thirdly, the Cabinet of Ministers Regulations may be issued only in cases, established by law, in the framework of the law and these Regulations shall not be at variance with the Satversme and other laws [*sk. Satversmes tiesas 1998. gada 10. jūnija spriedumu lietā No. 04-03(98); see the Constitutional Court June 10, 1998 Judgment in case No. 04-03(98)]*.

Fourthly, the Cabinet of Ministers Regulations shall be published and clearly formulated, so that the addressee of the norm included in it can understand his/her rights and obligations (*sk. Satversmes tiesas 2002.gada 20. maija spriedumu lietā No. 2002-01-03; see the Constitutional Court May 20, 2002 Judgment in case No. 2002-01-03).*

10. Provision that the law shall directly include authorization to issue the Regulations as well as the main direction of the Cabinet of Ministers Regulations follows from the requirement that the legislator himself has to solve the most important public life issues. Taking into account the fact that it is not purposeful to regulate all the issues in the legislative way, the legislator has at least to consider the issues. And authorization to regulate in a more detailed way this or that issue by the Cabinet of

Ministers Regulations, testifies about accomplishing of the above. The legislator shall clearly point out what issues and in what way the Cabinet of Ministers is authorized to regulate. When delivering the report on the contents of Article 14 (the first Part, Item 2) of the Law "The Structure of the Cabinet of Ministers", the 5th. Saeima deputy Egils Levits reasonably pointed out that the right of regulating an issue by a normative act may be delegated to the Cabinet of Ministers, however, it may take place **only with the consent of the Saeima** (authorization by the law passed by the Saeima) **and in the extent determined by the Saeima** *(sk. Latvijas Republikas 5. Saeimas 1993.gada 14. jūlija sēdes stenogrammu; see July 14, 1993 Verbatim report of the Republic of Latvia Saeima session// Latvijas Vēstnesis, July 15, 1993, No. 50, p.1).*

The legal norm by which the legislator authorizes the Cabinet of Ministers to regulate the procedure of implementation or restrictions of the fundamental rights, determined in the Satversme, shall be clear and precise. Restriction of the fundamental rights of a person by referring to obscure or possible to misconstrue authorization of the legislator shall not be admissible. If the extent of the authorization of the legislator is doubtful, the Cabinet of Ministers shall implement this authorization as much as possible avoiding restriction of the fundamental rights of a person, if the necessity of restriction is not directly envisaged in the norm of authorization.

10.1. The Cabinet of Ministers has settled the minimum wages for the convicted persons by referring to the Saeima authorization to determine the procedure under which the inmates are paid for their work. Taking into consideration the requirements of Article 14 (the first Part, Item 2), which authorize the Cabinet of Ministers to issue Regulations, it does not follow from Section 51, the fifth Paragraph that the Cabinet of Ministers has been asked to determine the amount of minimum wage for the convicted persons.

Authorization to the Cabinet of Ministers to determine the procedure of payment of wage for work done, does not envisage the right to determination of the minimum amount of the wage for work done.

10.2. Section 51 (the fifth Paragraph) does not clearly and precisely formulate the Saeima authorization to determine payment of wage for work of the convicted persons, as in other cases the legislator formulates the contents of such authorization more precisely. For example, it has been done in Section 61 of the Labour Law by authorizing the Cabinet of Ministers to determine the minimum monthly wage. In the first Paragraph of Section 61 of the Labour Law the legislator has repeated the guidelines of Article 107 of the Satversme, namely, that the minimum wage shall not be less than

that established by the State. In the second Paragraph of Section 61 of the Labour Law the Saeima has authorized the Cabinet of Ministers to determine the minimum monthly salary within the scope of normal working time as well as minimum hourly wage rates. In its turn in the third Paragraph of Section 61 of the Law the Cabinet of Ministers is authorized to determine the procedures for the specification and review of the minimum monthly wage.

10.3. The structure of the Code prohibits considering that the fifth Paragraph of Section 51 of this normative act authorizes the Cabinet of Ministers to determine the amount of wage for the inmates.

Section 51 of the Code, as can be seen from the title of the Section, regulates involvement of the convicted persons in work. The structure of the Code envisages that the wage of the convicted persons at the places of imprisonment shall be regulated in Section 54 of the Code. To the time the Amendments of October 14, 1998 becoming effective the first Paragraph of Section 54 determined that ”persons, who have been deprived of liberty shall receive wage taking into consideration the amount and quality of the work done and in accordance with norms and wage rate valid in the national economy. When calculating the wage of the inmates, it shall be taken into consideration that they shall partly recompense the expenses for the maintenance of the places of imprisonment”. In its turn the second Paragraph of Section 54 determined that ”the procedure and provisions on the payment of wages for the imprisoned persons shall be determined by the Republic of Latvia Council of Ministers”.

Section 54 of the Code has kept its title, even though the text of it has been deleted by October 14, 1998 Amendments. The Saeima deleted the first Paragraph, in its turn transferring the second Paragraph after specifying its wording to Section 51. On the basis of this authorization the Cabinet of Ministers has issued the impugned norm, even though the authorizing norm does not include authorization of determining the amount of wage for the convicted persons.

10.4. **Observation of the procedure of issuing a legal norm** is the precondition of the validity of the legal norm. **Therefore first of all it shall be assessed whether the procedure has been observed.** From the material in the case it cannot be established whether the Saeima has in a legislative way discussed the issue on determining a different minimum wage for the convicted persons than for other employed persons. The fifth Paragraph of Section 51 of the Code does not authorize the Cabinet of Ministers to issue Regulations with the above content.

10.5. Decrease of the minimum wage for the convicted persons, established in the impugned norm, has not been determined on the basis of the authorization, incorporated in law. When passing the impugned norm the Cabinet of Ministers has not observed the limits of authorization, established by law, namely, the Cabinet of Ministers has taken the decision on the minimum wages of the inmates of the places of imprisonment *ultra vires.*

Thus the impugned norm shall not be considered as the legal norm, passed under a due procedure, and is unconformable with Article 64 of the Satversme.

11. 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.

In the wording of the initial version of the Regulations on Wage, Item 5, the Cabinet of Ministers had determined that " the minimum wage of the convicted persons shall not be less than the minimum monthly wage, determined by the Cabinet of Ministers". Such a regulation complies also with the viewpoint, expressed in the written reply of the Cabinet of Ministers, that in case if an issue in the sector of employment of the inmates of the places of imprisonment is not regulated by the Code, the norms shall be applied in analogy with of the Labour Law. As the Code does not regulate the issue on the minimum wage of the convicted persons, provisions of the Labour Law shall be applied, if the legislator has not ruled otherwise (*sk. Lietas materiālu 1. sējuma 99-100.lpp.; see pp. 99-100 of Vol.I of the case material).*

12. By establishing unconformity of the impugned norm with Article 64 of the Satversme, the impugned norm shall be declared as illegitimate and null and void. Thus there is no necessity to additionally assess the compliance of the impugned norm with Article 14 of the Human Rights Convention as well as with Articles 91 and 107 of the Satversme.

The operative part

On the basis of Articles 30-32 of the Constitutional Court Law the Constitutional Court

hereby rules

to declare Item 1 of the Cabinet of Ministers April 22, 2004 Regulations 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 Deprivation of Liberty”” as unconformable with Article 64 of the Satversme and null and void as of the moment of its publication”.

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the moment of its publication.

The Chairman of the Court session A.Endziņš