



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga March 26, 2004

JUDGMENT

in the name of the Republic of Latvia

in case No. 2003 – 22 – 01

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

on the basis of the claim by the State Human Rights Bureau

pursuant to Article 85 of the Republic of Latvia Satversme (Constitution), Articles 16 (Item 1), 17 (Item 8 of the first part) and 28¹ of the Constitutional Court Law

holding the proceedings in writing

on March 2, 2004 at the Court session reviewed the case

”On the Compliance of Article 17 (the fifth part) of the Law ”On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” with Articles 91 and 100 of the Republic of Latvia Satversme””.

The establishing part

1. On November 2, 1995 the Saeima adopted the Law ”On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases” (henceforth – the Law on Insurance of Accidents), which took effect on January 1, 1997. The Law determines the procedure of organizing compulsory insurance in respect of accidents at work and occupational diseases as well as the formation and use of the insurance

resources. Besides, the rights and obligations of insured persons and insurance institutions as well as liability for violation of this Law are envisaged as well.

The insured person, who has suffered harm from an accident at work or contracted an occupational disease, experiences the right of receiving insurance compensation provided for by law, if the case of insurance has set in. The compensation includes monetary payments (*sickness benefit, compensation for the loss of ability to work, a lump sum benefit in cases established by law and compensation for additional expenses*) and provision of services to the insured person (*medical treatment, care and medical rehabilitation, retraining*) as well as monetary payments to a third person (*compensation for the loss of a provider paid to the family members of the insured person, who are not able to work and have been supported by the insured person and funeral benefit for the insured person*). Parts five and six of Article 17 of the Law on Insurance of Accidents include cases, in which the insured person loses the right to the compensation. The fifth part of the Article determines: " if the person, who is entitled to compensation for the loss of ability to work is in the place of deprivation of liberty, such a person shall lose the right to the compensation for the time period spent in the place of deprivation of liberty".

- 2. The submitter of the application – the State Human Rights Bureau** – holds that the challenged norm is not conformable with Articles 91 and 109 of the Republic of Latvia Satversme (henceforth – the Satversme). The Bureau stresses that it does not comply with the principles of European social policy either, as it envisages a differentiated attitude to disabled persons depending on the cause of disability.

If the cause of disability is heredity or general sickness then – in accordance with the Law "On State pensions" disability pension is paid to the person. Even if the person is in the place of deprivation of liberty, the disability pension is paid. In its turn, if the cause of person's disability is accident at work or occupational disease, then on the basis of the Law on Insurance of Accidents, compensation for loss of ability to work is paid. However, in compliance with the challenged norm, the person, who is in the place of deprivation of liberty, does not receive the above compensation.

Thus – to the mind of the submitter – a differentiated attitude to two groups of persons has been anticipated. There is no objective and reasonable basis for the above as the persons of both groups are disabled persons; for both compulsory insurance premiums have been paid and the insurance case has set in.

Because of their disability these persons cannot earn the needed cash even at the work offered at the prison. It refers especially to the prisons of the open type. Regardless of the fact that the persons remain disabled, social security is denied to them.

The submitter of the application does not agree with the Saeima viewpoint that the differentiated attitude has an objective and reasonable basis (aim). First of all, termination of payments of the social insurance, if the person is fully provided for by the State, is ungrounded. In its turn termination of payments in the system of social aid is understandable and permissible. Secondly, as concerns insurance in respect of accidents at work and occupational diseases, only the employer makes the installments, but in cases of insurance in respect of disability both – the employer and the employee do it. It is the obligation of the employer to take care of his/her employees, to be responsible for their health and security while at work. Therefore just the employer makes insurance payments in the special budget of accidents at work.

3. The institution, which has passed the challenged norm – the Saeima – does not agree with the viewpoint of the submitter.

The Saeima points out that if the person is in the place of deprivation of liberty, he/she is fully provided for by the State. Article 77 of the Latvian Penal Code (henceforth – the Code) determines that convicts receive food, which ensures normal process of the existence functions of the organism. Convicts, who serve a sentence in prisons of the closed or partly closed type and under the lowest regime, are supplied also with clothing and foot-wear. Article 78 of the Code - in accordance with the procedure and in the volume determined by the Cabinet of Ministers - guarantees medical aid to the persons sentenced to imprisonment and those put under arrest. Thus the aim of the challenged norm is to avert twofold State care to the convicts, who already are fully provided for by the State, namely, who receive social security in the places of deprivation of liberty in the determined volume. Thus to its mind Article 109 of the Satversme has been observed.

The Saeima pays attention to the fact that the social insurance system envisages differences between disability insurance and insurance in respect of accidents at work and occupational diseases. As concerns disability insurance both – the employer and the employee make the payment of the premiums. In its turn, as concerns insurance in respect of accidents at work and occupational diseases – only the employer does it. Therefore the procedure for calculation and payment of the above types of insurance is also different.

In accordance with Article 9 of the Code, determination of restrictions to rights of the convicted is permissible. Therefore the Saeima does not perceive any discrepancy between the challenged norm and Articles 91 and 100 of the Satversme.

- 4. The Department of the Places of Detention** did not present the explanation or contents of the concept ” to be fully provided for by the State” as no normative act has included it. Just as the Saeima, the Department points out that several guarantees, like, feeding free of charge, communal services, medical care etc., are envisaged by the Code and the Cabinet of Ministers Regulations, passed on the basis of the Code. In prisons of open type there are less guarantees, for example, the convicted wear their own clothing.

The normative acts do not anticipate social care of the disabled persons in the places of deprivation of liberty and no funds have been allotted for it.

- 5. The State Social Insurance Agency** (henceforth – SSIA) in its letter to the Constitutional Court points out that the person in the place of deprivation of liberty does not receive the following payments: compensation for loss of ability to work connected with an accident at work or contraction of occupational disease, sickness, maternity, burial allowances and unemployment benefits as well as the regularly paid state social benefits, for example, the State family benefit, child care benefit , childbirth benefit etc. Payment of the State pensions is not terminated.

If the person suffers in an accident at work, while being in the place of **deprivation** of liberty, compensation for the loss of ability to work is not granted till the time when the person is released from imprisonment.

SSIA has backed the proposal of the Ministry of Welfare of deleting the challenged norm from the Law on Insurance of Accidents.

- 6. The Ministry of Welfare** stresses that the fact of the person being in the place of deprivation of liberty also means it being fully provided for by the State and that has been the reason for incorporating the challenged norm into the Law. When answering to the question of the Constitutional Court the Ministry points out that during the times of the USSR rule, payment of any kind of pensions (grants) to convicts was terminated. Only after release from the places of imprisonment the payment of the pension was revolved beginning with the day of submission of the request.

The concluding part

7. Article 109 of the Satversme envisages that everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law. Social security means different measures of social insurance, among them the social insurance and social aid, which shall serve to meet also the special requirements of the disabled and involvement of them in public life.

The contents and the procedure of implementation of the social insurance in Latvia of the above right is determined by several laws, first of all the Law "On the State Social Insurance", as well as the specific laws on several types of social insurance. The social insurance system includes both - insurance in respect of disability and in respect of accidents at work or occupational diseases.

Article 5 of the Law "On Medical and Social Protection of the Disabled Persons" determines that disability is "a lasting or unceasing, not connected with changes of old age limitation of physical or mental abilities, which makes hard the integration of the person in the society, completely or partly takes away or limits the working ability or the ability to take care of oneself". The disabled person is a person to whom disability has been determined.

In accordance with Article 14 (the first part) of the Law "On State Pensions" prior to reaching the age insured persons with length of insurance no less than three years shall be entitled to disability pension if the person has been insured for this kind of insurance and has been recognized as a disabled person.

In its turn if the cause of disability is an accident at work or occupational disease and the insurance case has set in till January 1, 1997 the person is granted and paid the insurance compensation in conformity with the Law on Insurance of Accidents. As such provisions exist the law does not require a certain insurance length or recognition of the person as a disabled one, because compensation for the loss or working ability is granted also to persons, with regard to whom disability has not been determined. Besides, compensation for the loss of working ability is calculated in a different way than the disability pension and in difference from the disability insurance, compensation for the loss of working abilities includes not only monetary payment but also the right of receiving services.

8. The submitter of the claim holds that the challenged norm envisages a differentiated attitude without the impartial and reasonable ground in the

implementation of the above kinds of insurance. Therefore to his mind the challenged norm is at variance with the principle of legal equality.

This principle is enshrined in the first sentence of Article 91 of the Satversme and forbids the state institutions to pass such legal norms, which without a reasonable ground permit a differentiated attitude towards persons, who are in equal and comparable under certain criteria circumstances (*the Constitutional Court December 5, 2001 Judgment in case No.2001-07-0103, Item 3 of the concluding part*). To assess, whether the challenged norm complies with Article 91 of the Satversme read together with Article 109 of the Satversme, one has to ascertain whether:

- the persons are in equal and comparable circumstances;
 - the challenged legal norm envisages a differentiated attitude;
 - the differentiated attitude in implementation of social security has an objective and reasonable ground, namely, whether it has a legitimate aim and whether the principle of proportionality has been observed.
9. To establish whether the persons, who receive disability pension or compensation for loss of the working abilities, are in equal and comparable circumstances, it is necessary to find a uniting feature of the persons.

The submitter of the application holds that both groups of persons – receivers of both – the disability pension and the compensation for losing working abilities are disabled persons, namely, they are persons, whose disability has been determined.

To grant a person disability pension it has to be recognized as a disabled person. In its turn for granting compensation it is necessary to determine loss of the working abilities in per cents. Simultaneously with the loss of working abilities, if the loss of working abilities expressed in per cents complies with the criteria, established in Article 9 of the Law "On the Medical and Social Protection of Disabled Persons", disability is established.

Thus persons, to whom disability pension and compensation for loss of working abilities has been granted and who are recognized as disabled persons, are in equal and comparable circumstances.

10. The challenged norm **envisages a differentiated attitude** to both groups of persons, as it requires termination of compensation for the loss of working ability to a person for the time spent at the place of deprivation of liberty. The Saeima does not contest the above, however,

it points out that the differentiated attitude has an objective and reasonable basis.

One cannot agree with the Saeima statement that the objective and reasonable basis of the differentiated attitude, envisaged by the challenged norm, is the fact that payments for insurance in respect of accidents are made only by the employer. The Constitutional Court holds that it is of no importance who makes the payment of social insurance premiums. For the person to have the right to social insurance service, of importance is the fact that the payments have been made or they should have been made (*see the Constitutional Court March 13, 2001 Judgment in case No. 2000-08-0109, the concluding part*). Well-grounded is the viewpoint of the submitter of the claim that such a procedure for making the payments has been established because the employer has to take care about his/her employees, has to be responsible for their health and security. It is one of the objectives of the Law on Insurance of Accidents – to stimulate improvement of working conditions in such a way that the payment is made just by the employer (*see the Ministry of Welfare Social Report of 1997, p.49// http://www.lm.gov.lv/doc_upl/soczin_on 1997_lat.pdf, 02.03.2004*).

- 11.** One of the fundamental principles of the State social insurance is the solidarity between the payers of the social insurance premiums and the receivers of the social insurance services. Thus, if an employee is insured for a type of an obligatory social insurance, then, when the case of insurance sets in, he/she has the right to appropriate security (*see the Law "On the State Social Insurance": Article 3[Item 1 of the second part] and the first part of Article 12 as well as the Law "On Social Security"[Item 2 of the second part of Article 5]*). Regardless of the fact, payment of compensation for the loss of working abilities is terminated to persons, who are in places of deprivation of liberty, but payment of disability pensions is continued even in the places of deprivation of liberty.

The eighth Chapter of the Code regulates employment of persons in the places of deprivation of liberty. Thus the second part of Article 55 determines that "the employers, who engage convicts shall make obligatory social insurance payments on every employee as well as pay into the budget withheld personal income tax and the withheld from the salary of the employee obligatory part of the social insurance". In its turn the challenged norm, as concerns the imprisoned persons, who are insured in respect of accidents at work or occupational diseases, forbids receiving compensation if the insurance case sets in.

In its turn Item 73 (sub-item 2) of the Supplement to the European Council Ministers' Committee February 12, 1987 Recommendation

No.R(87)3 "Regulations on the European Places of Detention" requires payment of compensation to the convicts in case of accident at work or occupational disease (*in accordance with the Law on Insurance of Accidents – insurance compensation*) regardless of the fact whether the person is recognized as a disabled person.

Besides, when elaborating the challenged norm other international legal acts on the protection of the rights of a disabled person have not been taken into consideration either. Thus on December 20, 1993 the UNO General Assembly adopted Resolution No.48/96, by which it confirmed the Standard Provisions on equal possibilities for the disabled persons (henceforth – Standard Provisions). These Provisions are of the recommending nature to the states, even though separate norms may be legally binding as the legal norms of international practice (*see Item 14 of the Introduction*). Item 2 of the 8th. Provision requires ensuring that the social aid and social insurance and the like systems do not ignore the rights and interests of the disabled persons and do not discriminate them.

12. One cannot agree with the viewpoint of the Saeima that the objective of the challenged norm is to avert twofold state care for the imprisoned persons.

12.1. Provision No. 8 of the Standard Provisions obliges to ensure material aid to disabled persons for the time of their disability. The states have to take into consideration expenses arising because of disability to the disabled persons and their families. Besides rehabilitation, rendering of medical aid and other activities shall be envisaged to reach the optimum physical, intellectual, mental and social status.

As the Department of Places of Detainment explains to the Constitutional Court, no normative act of Latvia envisages social care for the imprisoned disabled persons; besides, no funds have been anticipated for it. It follows from the materials in case that medical care of full value is not guaranteed for the disabled persons in the places of deprivation of liberty, thus – their specific needs are not provided for. Repeated requests by the administration of the Vecumnieki open type prison to the State Social Insurance Agency to find the possibility of paying compensation for loss of working abilities to the disabled person of the third group, who is in the prison, also is the proof of the above. There is no possibility of rendering specialized medical aid to him/her, therefore disability and the consequences, caused by it, cannot be averted and the process of the disability growing worse cannot be stopped.

The First Department of the European Court of Human Rights in its final decision on initiating the case "Michael Farbtuch v. Latvia" (No.

4672/02) for review has concluded that Latvian prisons are not able to shelter persons with physical or mental disabilities. The personnel of the prisons are not qualified well- enough besides there are no special facilities to meet the requirements of the Committee of Ministers of the European Council Recommendation No. R (98)7 "On Ethical and Organizing Aspects of Health Care in the Places of Confinement".

Besides, the European Committee for the Prevention of Torture in its November 22, 2001 report expressed concern both about the conditions in Latvian prisons and medical care, including provision of medical remedies there. The employees of the prison health care service have informed the Committee that - with an exception of preparations for treating TB - all the other kinds of medical remedies are insufficient and the imprisoned persons have to rely on their families and friends (*see Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT] from 24 January to 3 February 1999. Strasbourg, 22 November 2001., pp. 53-56// <http://www.cpt.coe.int/documents/lva/2001-27-inf-eng.pdf> 02.03.2004*).

The Chairman of the Department of Places of Confinement Dainis Lūks in his interview acknowledges that the main problems of the system of places of confinement are connected with employment, medical care and education. The issue of providing the imprisoned persons with clothing has not been solved. As concerns medical care the situation is grave. Besides, the number of persons getting infected with AIDS and resistant forms of TB is growing. Even though the hospital of the Central Prison is in a disastrous condition, it is next to impossible to make use of other medical establishments as escorting of a great number of imprisoned persons is dangerous to the public. Another great problem is employment of the convicts, necessity of which shall be evaluated also from the viewpoint of meeting the civil requirements of the prisoners. Even though the prison need not be the source of earnings, one shall take into consideration the fact that the imprisoned persons, who have no employment, are dependant on the cash they are able to receive from the persons who are free. Thus inequality of possessions becomes topical and the fact may create complications, e.g., it may encourage crime attempts within the prisons and give the possibility to representatives of organized crime to manipulate the other convicts [*see Latvijas Vēstnesis, 27.01.2004, No.13 (2961)*].

12.2. The viewpoint of the Saeima that the challenged norm averts twofold state care is ungrounded also because of another reason. The State Social Insurance Agency in its letter to the Constitutional Court inter alia points out that persons are under a complete state care not only in places of confinement but also in institutions of social and medical care, financed from the budget

(see p.60 of the II Volume of the case). Payment for the stay in the above institutions is regulated by the Cabinet of Ministers October 10, 1995 Regulations "On the Procedure of Payment for the Stay of Persons in the Institutions of Social Care". Among other things the Regulations in conformity with a concluded agreement envisage transfer of pensions and state social insurance compensations to the account of the institution of social care. However, no normative act includes the provision of termination of payment from the special budget envisaged for accidents at work.

Thus, the specific needs of one group of imprisoned disabled persons are not satisfied and neither efficient medical and social care nor financial support for the lost income is being secured for it. Besides, connecting the challenged norm with the fact of the persons being in full care of the state is ungrounded.

13. In accordance with Article 13 of the Code, the penalty is executed in the closed type prison, partly closed type prison, open type prison as well as in correctional institutions for minors (juveniles). It is hard for the imprisoned persons with loss of working abilities to take part in jobs in the place of imprisonment and thus they cannot receive additional income. Besides, payment of compensation for the loss of working abilities of these persons is terminated. For example, at the open type prison Vecumnieki the imprisoned persons are mostly involved in seasonal jobs in the production of agricultural goods. The administration of this prison explains that the convicted persons have to buy clothing, footwear, medical remedies for their own money, besides, they have to pay for transport when attending medical institutions and going on leave.

One shall take into consideration that Article 50⁶ of the Code allows (with the permission of the warden) the imprisoned to live outside the territory of the open type prison, namely, in private houses or private (rented) apartments together with the family in the territory, which is determined by the warden after coordinating the issues with the Department of Places of Imprisonment. By denying the rights to compensation for the loss of working abilities the disabled are in fact denied the right of making use of the advantages of the open type prison but that is at variance with the fundamental principle, included in Article 4 of the Code – prohibition of discrimination of the convicted persons.

14. Section II, Item 63 of the June 25, 1993 UNO Vienna Declaration and Managing Program accentuates that all the human rights and freedoms are universal and therefore they refer also to the disabled. Any direct discrimination or a negative discriminating attitude towards the disabled persons shall be regarded as violation of their rights. The challenged norm violates the rights of the disabled. It is at variance with both –

fundamental principles of execution of criminal penalty and the fundamental principles of social insurance, besides, it ignores the interests of one group of the disabled persons.

Thus the challenged norm, denying the right to social security, guaranteed in Article 109 of the Satversme without impartial and reasonable ground envisages a differentiated attitude towards the disabled persons, who are in the places of deprivation of liberty. Therefore it does not comply with Article 91 of the Satversme either.

The substantive part

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

hereby rules:

to declare Article 17 (the fifth part) of the Law "On Compulsory Social Insurance in Respect of Accidents at Work and Occupational Diseases" as **unconformable** with Articles 91 and 109 of the Republic of Latvia Satversme and **null and void** as of the day of publishing of the Judgment.

The Judgment is final and allowing of no appeal.

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

The Chairman of the Court session

A.Endziņš