



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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Riga, April 23, 2004

## JUDGMENT in the name of the Republic of Latvia

in case No. 2003-15-0106

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

under Article 85 of the Republic of Latvia Satversme (Constitution) as well as Articles 16 (Item 1), 17 (the first part of Item 11) and 28<sup>1</sup>

on the basis of the constitutional claims by Armands Altmanis and Kaspars Zandbergs

holding the proceedings in writing

on December 9, 2003, February 4, 2004 and March 30, 2004 at the Court sessions reviewed the case:

**”On the Compliance of Items 9 and 94 of the Cabinet of Ministers April 29, 2003 Regulations No. 211 ”On the Internal Order of the Investigation Prisons” with Articles 91 and 111 of the Republic of Latvia Satversme (Constitution)””.**

### The establishing part

1. The sixth part of Article 76 of the Latvian Criminal Procedure Code determines: ”The procedure of confinement and placement, the daily regime, rights and duties, medical care and material collateral, security measures as well as the procedure under which the detained persons are

discharged from the investigation prison or removed to another place of deprivation of liberty shall be determined by the Cabinet of Ministers”.

In conformity with the sixth part of Article 76 of the Latvian Criminal Procedure Code the Cabinet of Ministers on April 29, 2003 passed Regulations No. 211 ”On the Internal Order of Investigatory Prisons” (henceforth – Regulations on Investigation Prisons). The Regulations took effect on May 1, 2003.

Regulations on Investigatory Prisons envisage for the suspects, the accused and defendants to whom the security measure – imprisonment has been applied (henceforth – the imprisoned), the procedure of confinement and placement in the investigatory prisons, their daily regime, rights and duties, medical care and material collateral as well as the security measures and procedure under which the detained persons are discharged from the investigatory prison or removed to another place of deprivation of liberty. Item 9 of the Regulations on Investigation Prisons envisages that the arrested persons have the right of ”keeping items for personal use in the amount and assortment established in Supplement No.2 of the Regulations as well as the foodstuffs, which may be bought in the shop of the institution of deprivation of liberty (Supplement No.3)”.

Item 11 of Supplement No.2 determines that the imprisoned may keep products, bought at the prison shop.

In accordance with Supplement No.3 the imprisoned may obtain the following products at the prison shop: 1) bread and bread products; 2) dairy produce; 3) smoked and semi-smoked meat and bacon; 4) salted fish, which do not need thermal treatment and smoked fish; 5) canned food (milk, meat, fish, vegetables and fruit); 6) sugar or its substitutes and confectionery; 7) sweets and chocolate; 8) vegetables, fruit, dried fruit, puree, jam, jelly, honey and nuts; 9) salt, tomato sauce, ketchup, horse radish and chips; 10) tea, coffee, cocoa, dry broth concentrate, mineral water, juice and non-alcoholic beverages; 11) concentrates of first and second courses of for quickly prepares meals (like soups and porridges), which do not need long thermal treatment.

In its turn Item 94 of the Regulations on Investigation Prisons anticipates: ” The imprisoned persons, who for violation of discipline are placed in the punishment cells have no right to meet their relatives, buy food , send or receive letters, use table games, it is prohibited to smoke”.

Daily food norms are established in the second Supplement to the Cabinet of Ministers Regulations No. 339 ”On the Food, Detergents and

Items for Personal Use Norms for the Arrested, Administratively Arrested and Administratively Detained Persons” (henceforth – Regulations No. 339. These Regulations were passed on August 6, 2002 and they are in effect since August 10, 2002.

On February 12, 1987 the Council of Europe Committee of Ministers adopted Recommendation No. R(87)3 on the European prison rules. It recommended the European Council Member States to take into consideration in their laws and practice the principles incorporated into it.

Item 25, sub-item 1 of the Regulations on European Places of Deprivation of Liberty determine that ”in accordance with the standards established by the institutions of health care the administration of the place of imprisonment shall ensure that the imprisoned persons in anticipated time receive food, which is properly prepared and passed. As concerns the quality and quantity of food it shall comply with the requirement of up-to-date hygiene and diet, as well as with the age, state of health, specifics of work and as much as possible also with the religious and cultural requirements.

Besides both in the Republic of Latvia Satversme (hereinafter – the Satversme) and in international instruments, binding on Latvia as well as in the Criminal Law the presumption of innocence is incorporated. Article 92 of the Satversme anticipates that everyone shall be presumed innocent until their guilt has been established in accordance with law. The same provision has been included also in Article 11 of the Universal Declaration of Human Rights, adopted by the UNO General Assembly on December 10, 1948, Article 14 of the International Covenant on Civil and Political Rights, adopted on December 16, 1966, Article 6 of the European Council November 4, 1950 Convention for the Protection of Human Rights and Fundamental Freedoms as well as in the second part of Article 1 of the Latvian Criminal Law.

2. The **submitters of the constitutional claim** – A.Altmanis and K.Zandbergs (henceforth – the submitters) request to assess whether the norm of Item 9 of the Regulations on Investigation Prisons, which determines that only the food products, obtained in the prison shop may be kept by the detained persons as well as the norm of Item 94 of the Regulations, which establishes that the arrested persons who has been placed into the punishment cell for violation of discipline have no right to buy products in the prison shop complies with Articles 91 and 111 of the Satversme.

Article 91 of the Satversme determines: ” All human beings in Latvia shall be equal before the law and the courts. Human rights shall be

realized without discrimination of any kind”. In its turn Article 111 of the Satversme establishes:” the State shall protect human health and guarantee a basic level of medical assistance for everyone”.

The submitters hold that Item 9 of the challenged Regulations on Investigation Prisons violates their rights fixed in the Satversme and international instruments because of several reasons.

Item 9 of the Regulations on Investigation Prisons forbids the imprisoned persons to receive food parcels because there is the possibility of buying products at the prison shop. This norm to their mind is at variance with the guaranteed in the Satversme right to health. A. Altmanis points out that the norm of Article 111 of the Satversme assigns the state with the duty of guaranteeing the right of every person to protect his/her health on the highest possible level as well as – with an exception of certain cases- assigns the state with the duty of abstaining from activities, which hinder the person to realize the above right. The challenged Item 9 of the Regulations on Investigation Prisons in its turn groundlessly limits the possibility of the imprisoned persons to take care of their health. The relatives of the submitter cannot afford sending money so that he would be able to buy food at the prison shop. The procedure envisaged in the above Item can be justified in the developed European states, where the state guarantees sufficient food to the imprisoned persons and therefore they do not need food parcels sent by the relatives.

To his mind Item 9 of the Regulations on Investigation prisons is at variance also with prohibition of discrimination fixed in the Satversme as it determines discriminating provisions for the arrested persons as compared with the convicts, who are allowed to receive food parcels. The convicted persons also have the right of receiving other products as well – e.g., articles for personal hygiene and cigarettes. The arrested persons do not experience this right.

In accordance with the presumption of innocence limitation of the fundamental rights of the arrested persons shall not be greater than limitations for the convicted persons, as – to the moment while their guilt has not been proved, they shall be regarded as innocent. As concerns the arrested persons to his mind only restrictions, which may be attributed to execution of the needed criminal procedure and guaranteeing of the security at the place of deprivation of liberty, shall be permitted.

The submitters hold that Item 94 of the Regulations on Investigation Prisons violates their rights, fixed in the Satversme and International Instruments because of several reasons.

Item 94 of the Regulations on Investigation Prisons forbids persons, who are placed in the punishment cell, to buy food for their money at the investigation prison shop. The fact limits the right to health, which is fixed in the Satversme and international instruments, as the submitters are denied the right of ensuring themselves with the necessary food. The norms determined by the State only partly provide them with vitamins, minerals, fatty acids and proteins, needed for the organism.

After getting acquainted with the materials in case, the submitters in their written replies back the viewpoint expressed in their constitutional claim.

3. The institution, which has passed the challenged act – **the Cabinet of Ministers** – in its written reply points out that the challenged Item 9 of the Regulations on Investigation prisons does not contradict the Satversme Article 111 because of the following reasons.

When passing the Regulations on Investigation Prisons the fact that every arrested person is under full care of the state and three times a day receives a hot meal in accordance with the determined nourishment norms. The norms have been elaborated in conformity with Item 25 of the Regulations on European Places of Detainment and as regards the amount of the necessary for functions of the organism proteins, fatty acids, minerals and vitamins were coordinated with the Ministry of Welfare and Latvian Food Centre. As concerns quality and amount of the food, it has been brought as near as maximum to the up-to-date sanitary hygienic and dietetic requirements and is varied on the basis of the age and health status of the arrested person. The imprisoned are allowed to additionally buying qualitative food products in the prison shop without any limitations. In the same way the imprisoned are allowed to receive postal money orders without any limitations.

When passing the Regulations on the Investigation Prisons, the fact that the administration of the prison is not able to examine the quality of the food parcels and products, as there is no possibility of determining their origin has been taken into consideration. Thus such products may create infectious gastric diseases of stomach and intestine tract.

A great part of narcotic and psychotropic substances reach the prisons just because of food parcels, as the above substances are hidden in food products. It does not favour keeping order within the prisons. In many other states receiving food parcels has been cancelled.

The Cabinet of Ministers in its written reply points out that Item 94 of the Regulations on Investigation Prisons does not contradict Article 111 of the Satversme because of several reasons.

Placement of the arrested persons into punishment cells is envisaged also in the normative acts of other states and has been acknowledged as permissible in the practice of the European Court of Human Rights and constitutional courts of other states. The Rules of Order envisage only partial restriction of rights for the persons, placed in punishment cells: meetings, possibility to buy food, sending of letters and usage of table games. The persons, placed in the punishment cells receive hot meals three times a day and – if it is necessary for reasons of health – they receive food determined by the doctor thus the imprisoned are not denied the minimum food necessary for ensuring functioning of their organisms, thus neither their health nor life are endangered.

4. After getting acquainted with the materials in case **the Minister of Justice** has pointed out that the challenged legal norms have been passed on the basis of the law. The imprisoned, who are in the investigation prisons are allowed to receive money orders without any limitations thus they have the possibility to additionally buy products in the prison shop.
5. **The Latvian Food Centre**, when answering to the questions asked by the Constitutional Court, points out that the daily food norms, determined for the arrested persons differ just a little from the "Recommended Norms of Energetic Amount and Nutrients for the Inhabitants of Latvia" (henceforth – RNEN). There is mainly the deficiency of calcium. The Food Centre holds that in a prolonged period of time such unbalanced food may create health problems.

### **The concluding part**

6. Article 111 of the Satversme determines that "the State shall protect human health and guarantee a basic level of medical assistance for everyone".

The right to human health is one of the social rights. The Constitutional Court in its earlier Judgments has already interpreted the human rights fixed in Article 111 of the Satversme and has taken into consideration the norms and practice incorporated in international human rights documents. Thus the Constitutional Court has concluded: that "from Article 111, namely, from the determined norm that "the State shall protect human health" it follows that the obligation of the state is not only to undertake measures of protecting health of the people but also to abstain from activities, limiting the possibilities of persons taking care of their health themselves. Thus, in compliance with Article 111 of the Satversme, every person to a certain extent has the right of undertaking measures he/she considers necessary to protect his/her health" (*the*

*Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, Item 1 of the Concluding part).*

Protection of health is connected with food. The challenged norms do not directly determine the prohibition for the imprisoned to receive food parcels. It follows indirectly from Item 9 of the Regulations on Investigation Prisons, which determines that the arrested persons have the right of "keeping items for personal use in the amount and assortment established in Supplement 2 of the Regulations as well as foodstuffs, which may be bought in the prison shop". Thus the Regulations on the Investigation prisons regulate not only the amount and assortment of food, which may be kept by the arrested person but also the place where he/she may obtain (buy) foodstuffs.

7. Article 116 of the Satversme determines that " the right of persons set out in Articles ninety- six, ninety-seven, ninety-eight, one hundred, one hundred and two, one hundred and three, one hundred and six and one hundred and eight of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs".

Article 116 of the Satversme does not name the rights mentioned in Article 111, however that does not mean that these fundamental rights are absolute. The Satversme (Constitution) is a single aggregate body and the norms included in it shall be interpreted systemically. In its October 22, 2002 Judgment in case No. 2002-04-03 the Constitutional Court concluded: the presumption that no restrictions may be imposed on the rights of every particular person, envisaged in Article 111 of the Satversme, would be at variance with the fundamental rights guaranteed to other persons by Article 89 of the Satversme, namely, to protect fundamental human rights, Article 111, which envisages protection of human health and other norms of the Satversme (*see Item 2 of the concluding part of the above Judgment*).

Thus under the conditions when it is necessary to subject to restrictions the rights of a person or a group of persons for the protection of interests vital for public, it is essential to ensure the balance between the restriction and the aim to be reached. Therefore the Court shall assess whether the restriction of the right to health protection, created by the challenged norm, meets the following requirements:

- 1) whether the restriction has been determined by the law;
- 2) whether it complies with the legitimate aim the state wants to reach by determining the restriction;
- 3) whether it complies with the principle of proportionality.

8. The Constitutional Court has established that "restriction of the rights of the arrested persons is permissible only by the law or on the basis of the law" (*see the Constitutional Court December 19, 2001 Judgment in case No. 2001-05-03, Item 6 of the concluding part*).

As has been pointed out before, Regulations on the Investigation Prisons, Items 9 and 94 of which incorporate restrictions of fundamental rights of the arrested persons, are the regulations by the Cabinet of Ministers. They have been passed in conformity with Article 76 (part six) of the Criminal Procedure Code, were promulgated under the procedure, anticipated by law and are in effect.

**Thus restrictions of the fundamental rights of persons have been determined on the basis of the law.**

9. Liberty of the arrested persons has been subjected to restrictions under the procedure established by the Latvian Criminal Procedure Code in order to exclude the possibility that the arrested person or the defendant, when set free, might evade investigation and court, hinder the process of ascertaining truth in a criminal case, influence the witnesses, commit a crime as well as to ensure execution of the judgment. In this case the democratic state system and the rights of other people are protected. In the same way, maintaining of appropriate order in the place of confinement if it is directed towards the protection of rights of the personnel and other imprisoned persons shall also be considered as a legitimate aim (*see the Constitutional Court October 22, 2002 Judgment in case No. 2002-04-03, item 4 of the concluding part*).

By including Items 9 and 94 of the challenged Regulations on Investigation Prisons, namely, by determining restrictions as to receiving food parcels as well as determining restrictions as concerns the possibility of the persons, placed in the punishment cell to buy foodstuffs in the prison shop, the Cabinet of Ministers has advanced the aim of maintaining order in the place of confinement. By maintaining order one shall understand not only taking into consideration the provisions for maintaining order and the protection of the personnel. Among other things it includes also guaranteeing security, health and life of the arrested persons.

**Thus the challenged norms have a legitimate aim.**

10. The circumstance that the person is imprisoned, namely, that the fundamental rights, determined in Article 94 of the Satversme, in accordance with the law have been restricted does not mean that all the other guaranteed by the Satversme rights have been restricted with

regard to the person as well (*see the Constitutional Court Judgment in case No. 2002-04-03, Item 3 of the concluding part; and Item 5.2.2. of the concluding part of the Constitutional Court March 5, 2003 Judgment in case No. 2002-18-01*). Thus it is necessary to assess whether in the particular case other fundamental rights of the person, guaranteed by the Satversme are also restricted and - if it is so – whether the restrictions are proportional.

The presumption of innocence is fixed in the following- the Satversme, international legal acts, binding on Latvia and in the laws. This presumption creates the duty to regard any person, whose guilt has not been proved in conformity with the law, as innocent of committing the crime. Therefore every restriction, inflicted on the arrested but not convicted persons shall be commensurate with this principle. Only the restrictions, which are necessary for performing criminal procedural activities or for maintaining order and security at the place of detention, shall be permitted as regards persons, who are to be presumed innocent to the moment of proving he/she is guilty (*see the Constitutional Court Judgment in case No.2002-04-03, Item 4 of the concluding part*).

Besides in cases, when there is doubt on the contents of the human rights norms, enshrined in the Satversme, they should be interpreted as much as possible in conformity with the application in practice of the international human rights norms. Thus one may agree with the viewpoint expressed by the submitters that when taking the decision on this issue one has also to take into consideration the requirements included in the documents of the European Council. Thus Item 91 of the Committee of Ministers of the European Council in its February 12, 1987 Recommendation No. R(87)3 "Provisions on the European Places of Confinement" determines that "all the other restrictions as only those, which are necessary for the penalty procedure and security of the place of confinement shall not be permissible".

The Cabinet of Ministers mentions the following justification for including the restriction in the challenged norm - the imprisoned are in full care of the state and three times a day receive a hot meal, established by certain norms. These norms are envisaged in Appendix 1 of the Cabinet of Ministers Regulations No. 399.

Liberty of the arrested persons may be restricted in the compliance with the law and in the public interests. However, if the state chooses the most acceptable security means – arrest for the persons, then it is the duty of the state to ensure that the arrested person receives a potentially good food, so that it upkeeps life functions and helps maintaining health.

As has been established before, maintaining order at the place of confinement includes also guaranteeing security of the place. The duty of the state, when applying arrest as the security means, is not only to take care of the persons so that they do not influence investigation and evade court, but also to ensure that the arrested persons are not subjected to harm. Food parcels *per se* (by themselves) cannot endanger the security of the place of confinement; however, the contents of the parcel may create danger.

The Cabinet of Ministers has also pointed out that there is no possibility of finding out the origin and quality of the foodstuffs placed into the food parcels, besides the possibility of delivering to the imprisoned narcotic and psychotropic substances exists. The Constitutional Court does not deny the existence of the above problem, however, it stresses that the problem shall be solved in a complex way.

As has been stated before, the State has the duty of ensuring that the imprisoned receive good food. If it is not ensured, the state shall look for other means to reach the legitimate aim of forbidding receiving food parcels – to secure order in the places of deprivation of liberty. Besides, the submitters have repeatedly stressed that the food ensured by the state is insufficient for maintaining health. One of the submitters – A. Altmanis has pointed out that the prohibition to receive food parcels may create to him as well as to other arrested persons, whose relatives cannot afford sending money to them, unfavourable consequences. Moreover, the Food Centre of the Ministry of Welfare has acknowledged that the daily food norms, confirmed by the Regulations No.339, are insufficient - the total energetic amount is insufficient, there is deficiency of proteins, fats and carbohydrates. However, the deficiency of calcium is regarded to be the most important one, as within the daily food norms for several groups of arrested persons no dairy products are included. Thus within a long period of time the unbalanced food may create health problems.

**If food of full value is not ensured to the arrested persons then prohibition of receiving food parcels, determined in Item 9 of the Regulations on Investigation Prisons, in a longer period of time may affect the health of those persons, thus the Item is not conformable with the advanced legitimate aim and is unconformable with Item 111 of the Satversme.**

11. As the challenged legal norm is at variance with one of the Satversme Articles – Article 111, then there is no need of assessing its conformity with Article 91 of the Satversme.

12. The applications contain the claim on the compliance of Item 94 of the Regulations on Investigation Prisons with Articles 91 and 111 of the Satversme, however, it follows from the claims and additions to them, which the submitters have handed in after getting acquainted with the materials in case, that only conformity of the norms with Article 111 of the Satversme shall be evaluated.

Item 94 of the Regulations on Investigation prisons establishes that the imprisoned, to whom for violating of discipline disciplinary penalty – placement into the punishment cell has been applied, several restrictions – also the restriction to buy products at the prison shop have been determined. An arrested person may be placed in the punishment cell for fifteen days and nights and only for gross and systematic violation of the regime of the Investigation Prison.

Disciplinary penalty is means, the aim of which is to secure internal order of the Investigation prison, therefore one has to conclude that the above aim is legitimate (*see Item 9 of this Judgment*).

On May 4, 1990 the Supreme Council of the Republic of Latvia when adopting the Declaration "On the Accession of the Republic of Latvia to International Legal Instruments on Human Rights Issues", among other documents, declared as binding also the "Minimum Standard Regulations on Treatment of Prisoners"[*passed at the Geneva 1955 First UNO Congress on Preclusion of Crime and Treatment of Prisoners; supported by the UNO Economic and Social Council July 31, 1957 Resolution 663 C (XXIV) and May 13, 1977 Resolution 2076 (LXII)*]. The 31<sup>st</sup>. fundamental principle (Item 1) of the above Standard Regulations determines that "penalties, which envisage a strict imprisonment regime or decrease of the food norms may be imposed only after the doctor has examined the imprisoned person and has in a written form confirmed that the person is able to serve the time".

However, Item 94 of the Regulations on Investigation Prisons shall be read together with Items 91, 93 and 96 of the above Regulations. The Items determine that the arrested persons, who are placed in the punishment cell, are supplied with food and drinking water, as well – in cases of necessity connected with the health of the persons – also with the food determined by the doctor. Besides, a special list establishes what essentials the arrested persons may take with him/her to the punishment cell.

The imprisoned, who are placed in the punishment cell, receive the same food and under the same procedure as the arrested persons, to whom disciplinary penalty has not been imposed. Thus there is no ground to conclude that the food norm has been decreased for the imprisoned,

placed in the punishment cell or that such conditions have been created to them, which restrict their fundamental rights, guaranteed by Article 111 of the Satversme. Besides, the person is placed in the punishment cell only for a short period of time.

The restrictions of the fundamental rights established in Satversme Article 111, envisaged in Item 94 of the Regulations on the Investigation Prisons, which forbid the arrested persons, placed in the punishment cell, buying food stuffs at the prison shop have been determined with a legitimate aim and are proportionate to it.

**Thus the challenged Item 94 of the Regulations on Investigation Prisons complies with Article 111 of the Satversme.**

### **The substantive part**

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

**hereby rules:**

1. To declare the prohibition of receiving food parcels, following from the Cabinet of Ministers April 29, 2003 Regulations No. 211 "Regulations on the Internal Order of the Investigation Prisons" as **unconformable with Article 111 of the Republic of Latvia Satversme** and null and void as of July 1, 2004 if by that time the Cabinet of Ministers will not ensure that the daily food norms for the arrested persons comply with the requirements, established in "The Recommended Nutrient Norms for the Inhabitants of Latvia".
2. To declare Item 94 of the Cabinet of Ministers April 29, 2003 Regulations No. 211 "On the Internal Order of the Investigation Prisons" about buying foodstuffs at the prison shop as **being in compliance with** Article 111 of the Republic of Latvia Satversme.

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

The Judgment is final and allowing of no appeal.

The Chairman of the Court session

A.Endziņš