



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, June 12, 2002

JUDGMENT in the name of the Republic of Latvia

in case No. 2001-15-03

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court Aivars Endziņš, justices Juris Jelāgins, Romāns Apsītis, Ilma Čepāne, Andrejs Lapse and Ilze Skultāne

Under Article 85 of the Republic of Latvia Satversme (Constitution) as well as paragraph 3 of Article 16, Article 17 (Paragraph 11 of its first part), Articles 19² and 28¹,

on the basis of the constitutional claim by Boris Klopcovs,

holding the proceedings in writing reviewed the case

”On the Conformity of the First Supplement of the March 9, 2001 Transitional Provisions of the Ministry of Justice Regulations on the Internal Order at the Institutions of Deprivation of Liberty with Article 47 (its First Part) of the Punishment Execution Code and Article 111 of the Republic of Latvia Satversme”.

The establishing part

Up to April 1, 1999 in accordance with the second part of Article 47 of the Punishment Execution Code (henceforth – the Code) the Regulations on the Internal Order at the Institutions of Deprivation of Liberty established the list of these goods, which the convicts were forbidden to receive in parcels and printed matter.

Article 5 of the Code envisaged that the institutions of the Republic of Latvia Home Office (henceforth- the Home Office) execute court judgments on deprivation of liberty. By the June 28 1995 Home Office Order "Regulations on the Internal Order at the Institutions of Deprivation of Liberty" were confirmed. The Regulations did not prohibit receiving food parcels.

By the October 14, 1998 Law "Amendments to the Punishment Execution Code", which took effect on April 1, 1999, the institutions of deprivation of liberty were assigned to the supervision of the Republic of Latvia Ministry of Justice (henceforth – the Ministry of Justice).

In the above amendments Article 47 of the Code was expressed in a new wording. The second part of the Article became its third part. In accordance with the new second part parcels may be substituted by money orders, value of which does not exceed one half of the minimum monthly wages, determined by the Republic of Latvia Cabinet of Ministers (henceforth- the Cabinet of Ministers). The convicted is allowed to buy goods at the shop inside the institution of deprivation of liberty.

By the Amendments Article 11 of the Code was also expressed in a new wording. At the present moment the fifth part of this Article determines that the Cabinet of Ministers shall determine Regulations on the Internal Order at the Institutions of Deprivation of Liberty.

By the Minister of Justice March 9, 2001 Order No. 1-1/114 the Transitional Provisions on the Internal Order at the Institutions of Deprivation of Liberty (henceforth – the Transitional Provisions) were confirmed.

Item 37 of the Transitional Provisions determined that the convicted experienced the right of keeping the amount and assortment of those items for personal use and food-stuffs, which are determined by the administration and are mentioned in the 5th. Supplement "List of those Items and Food-stuffs, which may be kept by the convicts". Item 13 of it envisaged that the convicts may keep products, bought at the shop inside the institution.

In the 1.st Supplement of the Transitional Provisions "The List of Items, which May be Put into Parcels" the food was not mentioned either.

On the basis of the constitutional claim submitted by Boris Klopčovs (henceforth – the applicant) the case " On the Conformity of the First Supplement of the March 9, 2001 Transitional Provisions of the Ministry of Justice Regulations on the Internal Order at the Institutions of Deprivation of Liberty with Article 47 (its First Part) of the Punishment Execution Code and Article 111 of the Republic of Latvia Satversme" was initiated.

On February 19, 2002 the Cabinet of Ministers passed Regulations No.73 "On the Internal Order at the Institutions of the Deprivation of Liberty" (henceforth – Regulations on the Internal Order) and the Transitional Provisions lost validity.

Item 46 of the Regulations on the Internal Order determines that the convicts have the right of keeping items for personal use and food in the amount and assortment, established in Supplement No.3. In its turn Item 61 envisages that only those articles, which according with Supplement 3 may be kept by the convict, may be put into the parcels. Supplement 3 "Items and Food, which May be Kept by the Convicts" as well as Supplement 5 of the Transitional Provisions establishes that the convicts are allowed to have in their possession only the food stuffs, bought in the shop of the institution of deprivation of liberty.

When realizing the above facts the Constitutional Court did not terminate the proceedings, as then the request of the applicant to evaluate conformity of the prohibition to receive food parcels with the first part of Article 47 of the Punishment Execution Code and Article 111 of the Republic of Latvia Satversme (henceforth – the Satversme) would not be reviewed on its merit. On April 9, 2002 the Constitutional Court renamed the case accordingly.

The applicant holds that the prohibition to receive food parcels, incorporated into the Transitional Provisions, to be more precise, in the Regulations on the Internal Order is not in conformity with the first part of Article 47 of the Code and Article 111 of the Satversme, as Article 47 of the Code envisages the right of receiving also food stuffs in parcels for the convicts.

The applicant expresses the viewpoint that prohibition of food parcels has made the process of serving the sentence much crueler; especially for those prisoners, whose relatives are unprosperous or needy persons who had previously brought or sent food from their farms. In the application it is pointed out, that by depriving the prisoners of the right of receiving high quality food with the sufficient amount of vitamins, might be bad for their health and that his fundamental right to protection of health, incorporated into Article 111 of the Satversme, has been violated.

The Cabinet of Ministers in its written reply expresses the viewpoint that the claim of the applicant is groundless and his statement, that by prohibiting receiving food parcels the convicts are denied the possibility of receiving the minimum food, necessary for the human body and therefore their health is endangered, is not truthful.

The Cabinet of Ministers holds that the statement of the applicant on unconformity of the prohibition of receiving food parcels with Article 111 of the Satversme is ungrounded because:

1) all convicts are fully provided for by the state and three times a day receive warm food, which ensures normal functioning of the human body and contains the needed amount of proteins, fatty acids, minerals and vitamins. The nourishment norms comply with the requirements of Item 25 of the European Council Ministers' Committee Recommendation No. R(87)3 "Regulations on the European Places of Detention" and are approved by the Republic of Latvia Ministry of Welfare Food Centre. Depending on age and state of health, the nourishment norms are differentiated;

2) the convicts have the possibility of buying qualitative foodstuffs, including fruit and vegetables, in the shops, located in the territory of the prison. The assortment is analogous to that at the city shops, but the level of prices very often is lower than in the city shops.

In the written reply it is pointed out that prohibition of food parcels has been determined also because the administration of the prison has no possibility of examining the quality of the food, sent or brought in the parcels. As the result, contagious diseases may break out among the prisoners. Besides, a great part of narcotic and psychotropic substances reach the prisons just in among different foodstuffs. The Cabinet of Ministers holds that one should take into consideration also the fact that in all prisons of the developed European states food parcels have been cancelled.

The Cabinet of Ministers explains that the Regulations on the Internal Order at the Institutions of Deprivation of Liberty, confirmed by the Order of the Ministry of Home Affairs on June 28, 1995 and passed before the above institutions were assigned to the supervision of the Ministry of Justice, were based on the normative acts of the Soviet times. In the written reply it is pointed out that the Regulations had evidently been out-of-date, not meeting the requirements of the international standards of our time. Terminology was also archaic; therefore the necessity to operatively elaborate a new legal act arose. On March 9, 2001 the Minister of Justice with her decree confirmed a new instruction – the Transitional Provisions.

The Cabinet of Ministers informs that neither Article 47 nor any other Article establishes that food stuffs shall be included in the food parcels.

The Cabinet of Ministers points out that the Transitional Provisions envisaged the possibility for the convicts to receive parcels, the amount and weight of which was determined by the Code, however the assortment and foodstuffs had been excluded. Analogous approach has been used in the Regulations on the Internal Order.

The concluding part

1. As has been pointed out in the written reply, food was excluded from the assortment of parcels on the basis of the Provisions of the Code Article 47 (its third part). It envisages that the list of those items, which the convicts are prohibited to receive in the parcels shall be regulated by the Regulations on the Internal Order.

The list of those items, which the convicts are prohibited to receive in the parcels in the form of a supplement to the Regulations on Internal Order has not been elaborated. Supplement No. 3, which has been added to the Regulations names "the items and food, which may be kept by the convict".

Prohibition of food parcels follows from Item 13 of the above Supplement, determining that "the convict may keep the food, which he has bought in the institution of deprivation of liberty shop".

2. Analysis of the Code norms testify, that the term "items" has never been used in the meaning , which includes also food. In the Code these two terms have always been used separately and with an independent meaning.

Thus, the third part of Article 41¹ determines that it is not allowed to deliver money, food and these items which have been prohibited for the use in the prisons to the convicts; the third part of Article 43 establishes that the list of food and items, allowed for selling to the convicts, is regulated by the Regulations on the Internal Order.

The contents of the term "items", incorporated into the Regulations on the Internal Order, also does not include food. For example, Items 1 – 8 of the Supplement No.6 "*Food and items*" , which the convict may buy in the Institution of Deprivation of Liberty shop, mention food– bread, dairy produce, smoked meat, bacon, smoked fish, sugar, vegetables, fruit, jam, tea, coffee, juice and others. Beginning with Item 9 *items* are enumerated - stationery, tableware, clothes and foot-wear brush, shoe polish, personal hygiene accessories etc.

Thus the term "*items*", mentioned in the third part of Article 47 of the Code may not be interpreted in an extended way by including the food into it.

3. The Cabinet of Ministers in its written reply points out that the Code does not envisage that food may be put into the parcels for the convicts. This argument is ungrounded because of the following reasons:

3.1 When evaluating the above argument by the Cabinet of Ministers, of essential importance is the fact that the convict is allowed to receive not more than eight parcels a year and the weight of one parcel cannot exceed eight

kilograms. Up to the mid- 1994 not more than four parcels a year were allowed and no possibility of receiving additional parcels was envisaged.

By the Cabinet of Ministers August 2, 1994 Regulations No. 148, which were passed under Article 81 of the Satversme and December 15, 1994 Law " On the Amendments to the Latvian Reformatory Code", the amount of parcels to be delivered to the convicts was doubled. The above amendments introduced also the progressive system of punishment execution. Convicts, whose conduct was good and who had honest attitude to work and learning, were given the possibility of receiving additional parcels but not more than 6 times a year. Thus, a convict has the right of receiving 64 kilograms a year, but if his conduct is good – 48 kg more; all in all – 112 kg of goods.

The amount of items testifies that parcels were mainly meant to contain food but not clothing, footwear, personal hygiene accessories and other items. Besides, one has to take into consideration the circumstance that the convicts find themselves in full state maintenance and the needed clothing, footwear as well as the items necessary for laundering and personal hygiene are handed out at the prison (*see the Cabinet of Ministers May 7, 2002 Regulations No. 155 "On the Norms of Material Provision of Food and Social Needs for the Convicts"*).

The statistics of the previous years confirm that before determination of the prohibition, the main contents of the parcels was just food. For example, as concerns parcels, in 2000 at the Central Prison 136 tons of food were accepted, in the first five months of 2001 – sixty tons of foodstuffs (*see December 19, 2001 Constitutional court Judgment in case No. 2001-05-03*).

3.2 The second part of the Code Article 47 establishes that parcels may be substituted by money orders. For this money the convict may buy goods in the Institution of Deprivation of Liberty shop in the month when he exercises the right of receiving the parcel.

In conformity with the third part of the Code Article 43, Supplement 6 of the Regulations on the Internal Order determines what food and items it is allowed to sell to the convicts at the institutions of deprivation of liberty shops. If the convict is allowed to buy food and items for the money received by money orders, which substitute receiving parcels, then it means that the same things may be received in parcels.

3.3 The possibility of receiving food parcels follows also from the fourth part of the Code Article 77, which envisages that pregnant women, mothers, who breast-feed babies, juveniles as well as ailing persons –and who have the conclusion of the medical commission - may receive additional parcels with foodstuffs in them.

When interpreting this norm by reading it together with the first part Of the Code article 47, it can be concluded that the above persons besides the parcels (also food parcels), envisaged in Article 47 may receive also additional food parcels.

4. Grammatical and systemic interpretation the Code norms makes one conclude that the legislator, when determining for the convicts the right of receiving parcels, had not wanted to exclude from them food parcels and has envisaged including food into them.

The Cabinet of Ministers has not interpreted the first part of the Code Article 47. Prohibition of food parcels, incorporated into the Regulations on Internal Order, is unconfirmable with the legal norm of higher legal force. Therefore there is no necessity to evaluate conformity of the above prohibition with Article 111 of the Satversme and the Constitutional Court does not do it.

5. The Cabinet of Ministers mentions eventuality that the greatest amount of narcotic and psychotropic substances reach prisons hidden in food-stuffs as one of the main reasons for determining the prohibition. The Constitutional Court does not doubt that there exists the necessity of solving the problem of drug addiction, however, only the legislator experiences the right of determining prohibition of food parcels for the convicts.

The Saeima, when taking into consideration the present possibilities of the state to provide the convicts with food, shall assess whether the determination of the above prohibition for the reasons of eliminating distribution of narcotics or reaching other objectives is proportionate to a noteworthy number of the imprisoned, who have no possibilities of buying additional food in the shops inside the institutions of deprivation of liberty.

The Substantive part

On the basis of Articles **30 – 32** of the Constitutional Court Law

The Constitutional Court

DECIDED:

to declare the Cabinet of Ministers February 19, 2002 Regulations No. 73 ” On the Internal Order at the Institutions of Deprivation of Liberty” in the part on prohibition of food parcels **as unconfirmable** with the first part of Article 47 of the Latvia Punishment Execution Code and null and void as of the day of its publishing.

The Judgment is final and allowing of no appeal.

The Chairman of the Constitutional Court.

Aivars Endziņš.