



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Riga, December 19, 2001

JUDGMENT in the name of the Republic of Latvia

in case No. 2001-05-03

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Juris Jelāgins, the justices Ilma Čepāne and Andrejs Lepse

under Article 85 set by the Satversme (Constitution) as well as Item 3 of Article 16; Article 17 (the first part, Item 11) and Article 28□ of the Constitutional Court Law

on the basis of the constitutional claim by Aivars Andersons and Kaspars Zandbergs

holding the proceedings in writing reviewed the case No. 2001- 05- 03

”On the Compliance of the Ministry of Justice May 9, 2001 Instruction No.1-1/187 ”Transitional Provisions on the Procedure of Keeping the Suspected, Accused, Detained and Sentenced Persons in Investigation Prisons” with Articles 95 and 111 of the Satversme (Constitution)””.

The Constitutional Court **established:**

On February 5, 1992 the tenth section ”Short –term and Pre-trial Detention” was deleted from the Latvian Criminal Code.

On April 30, 1994 the ”Instruction on the Procedure of Keeping the Suspected, Accused, Detained and Sentenced Persons in the Ministry of the Interior Investigation Prisons” was confirmed by the Minister of the Interior Order No. 113.

On May 9, 2001 the Minister of Justice with her Instruction No. 1-1/187 (henceforth- Instruction No. 1- 1/187) certified the "Transitional Provisions on the Procedure of Keeping the Suspected, Accused, Detained and Sentenced Persons in the Investigation Prisons" (henceforth – the Transitional Provisions).

Item 8 of the Transitional Provisions determines that food in the amount and assortment, which is envisaged in the Regulations of Internal Order in the Investigation Prisons (henceforth – Regulations of Internal Order) and confirmed by the Department of Imprisonment Places, shall be left to the arrested and sentenced persons.

On May 9, 2001, with the Department of Imprisonment Places Order No 63, Regulations of Internal Order were confirmed. Item 39 of the Regulations envisages that – in accordance with Supplements 1 and 2 - the arrested persons experience the right of keeping food in the assortment and amount determined by the administration.

Item 13 of Supplement 1 of the Regulations "The List of Things, Objects and Food, which May be Kept by the Arrested Persons" envisages that the arrested persons may keep only those products, which have been bought in the prison shop. In its turn, Supplement No.2 "The List of Things, Objects and Products, which one May Buy at the Prison Shop" names the products, which the arrested persons may purchase at the prison shop.

The applicants of the constitutional claim (henceforth – the applicants) hold that the Transitional Provisions are unconfirmable with Articles 95 and 111 of the Republic of Latvia Satversme (Constitution; henceforth – the Satversme).

The applicants point out that good food (taking into consideration its energetic value and composition as well as taking into account the individual needs of a person and his/her religion) is one of the integral ingredients of the protection of the person's health. The applicants express the viewpoint that by prohibiting receiving food parcels, the greatest part of the arrested persons are denied the possibility of getting the amount of food, needed in the conditions of the confinement. As the result the possibility of falling ill increases and thus the fundamental rights to the protection of health and the minimum medical care established by Article 111 of the Satversme are violated.

In their claims the applicants also point out that by not ensuring the possibility to receive a sufficient amount of products, the rights to protection of the honor and dignity of persons as well as prohibition of torture, other cruelty or abasement of dignity have been violated. The applicant Kaspars Zandbergs holds that a long-standing prohibition to receive nutrients, needed by persons who are to be legally regarded as innocent shall be qualified as torture in the

sense of both – Article 95 of the Satversme and the UNO 1975 Declaration "On the Protection of All Persons from Torture or Other Cruel, Inhuman or Humiliating Treatment".

The applicants request the Constitutional Court to declare the Transitional Provisions as null and void in the part of forbidding the arrested persons to receive food parcels.

The Republic of Latvia Ministry of Justice (henceforth – the Ministry of Justice) expresses the viewpoint that the complaint, expressed by the applicants, is ungrounded.

The Ministry of Justice explains that in accordance with Articles 13 and 16 of the Sentence Enforcement Code of Latvia there exists a unified system of penitentiary institutions. It consists of the Department of Imprisonment Places, which is under the supervision of the Ministry of Justice and which – in its turn- supervises the penitentiary institutions, namely, the investigation prisons; closed, partly closed or open type prisons as well as reformatory institutions for underage individuals. The sentenced persons serve their sentence also in the isolated sections of investigation prisons or carrying out different jobs. The arrested persons are placed both in the investigation prisons and investigation sections of other penitentiary institutions. Taking into consideration the unified infrastructure and the unified security precautions, it is not possible to determine a privileged regime to one part of the prisoners without destabilizing the system and security of prisons.

The Ministry of Justice points out that the necessity of adopting the Transitional Provisions arose after the penitentiary institutions were passed over from the supervision of the Ministry of the Interior to the Ministry of Justice. On May 9, 2001 the Minister of Justice confirmed the Transitional Provisions and on May 14, 2001 they took effect. The text of the Transitional Provisions was incorporated into the Informative System of Normative Acts (NAIS). The Ministry of Justice explains that the draft of analogous Cabinet of Ministers Regulations is being worked out and when the Regulations are adopted the Transitional Provisions – in accordance with Item 4 of the Instruction No. 1-1/187 - will lose validity.

In the written reply it is stated that in compliance with Article 16 of the Cabinet of Ministers Structure Law, the Department of Imprisonment Places independently performs those state functions assigned by law and is responsible for their fulfillment. Therefore the Transitional Provisions regulate only the general order of keeping the arrested in investigation prisons. Making use of the practice of the developed country prison system, the Department of Imprisonment Places was delegated to elaborate specifics of the Provisions.

The Ministry of Justice stresses that the detained persons are not forbidden to receive parcels, but determination of the assortment is the prerogative of the Department of Imprisonment Places. The Ministry of Justice justifies the prohibition of delivering parcels by stating that:

- 1) every imprisoned person is provided for by the state, i.e. thrice a day receives warm meals, which ensure normal functioning of the body and contain the needed amount of proteins, fatty acids, minerals and vitamins. The nutriment norms are worked out so that no additional feeding is necessary and are approved by the Republic of Latvia Ministry of Welfare Food Centre. Depending on the age and health of the imprisoned person, the norms are differentiated. In its October 8, 2001 additional explanations the Ministry of Justice points out that 0,51 centimes are envisaged for the daily feeding of one imprisoned person. In its July 13, 2001 reference the Ministry informs that 136 tons of food have been accepted in the Central prison in 2000, but in the first five months of 2000 – 60 tons of food.
- 2) In accordance with the Regulations of the Internal Order the imprisoned persons experience the right of receiving money orders without any limitations for purchasing food at the prison shop. At the shop the imprisoned are able to purchase the same things they earlier used to receive in parcels, besides the quality of the products is regularly controlled and the prices are analogous or even lower than those in the city shops.

The Ministry of Justice in its additional explanation points out that on September 1, 2001 2036 - that is 52% - imprisoned persons had money in their personal accounts (the average sum – 13,5 Ls to a person).

As an additional reason for prohibition of receiving parcels the Ministry of Justice names the impossibility of controlling the quality of the delivered food, which could end in breaking out of gastric diseases. Besides there is the necessity of solving drug addiction problems in prisons, as the greatest part of narcotic and psychotropic substances reach prisons hidden in the food. By the way – all the European and other developed countries have cancelled acceptance of parcels.

The Constitutional Court established:

1. The Transitional Provisions have been passed in compliance with Article 15 (the first part of Item 2) of the Cabinet of Ministers Structure Law, determining that individual ministers may issue instructions binding to the institutions subordinate to them if the respective issue has not been regulated by law or Cabinet of Ministers Regulations. Instruction No. 1-1/187 envisages that the personnel of the Department of Imprisonment Places and the institutions subordinated to it shall be

acquainted with the Transitional Provisions. Neither the Transitional Provisions nor the Regulations of Internal Order have been published for common knowledge.

Thus the Transitional Prohibitions and Regulations of Internal Order are internal normative acts.

2. In accordance with Item 9 of the Cabinet of Ministers June 13, 1995 Regulations No. 154 "Regulations on the Norms of Administrative Proceedings", the internal normative act is binding to that subject of public rights, who has passed it as well as to its institutions, structural units and employees. Therefore the addressee of the Transitional Provisions is only the personnel of the subordinated to the Ministry of Justice Department of Imprisonment Places and the personnel of the institutions subordinated to it. However, the relations between the state and the imprisoned persons are also indirectly regulated. In compliance with Article 15 (the second sentence of its fifth part) of the Cabinet of Ministers Structure Law the state institution may justify its specific activity (in this case it concerns the imprisoned persons) by only referring to the Satversme, the law or the Cabinet of Ministers regulations, i.e., to the external normative act but not to an instruction – the internal normative act.

On July 14, 1993 when discussing the draft law " On the Renewal of April 1, 1925 Law "The Structure of the Cabinet of Ministers"", the deputy of the Fifth Saeima Egils Levits pointed out "It is very important that the official shall not justify his activity with an instruction, because no instruction has the accept of the legislator. It means that the instruction is just the Regulation of Internal Order for the institution itself. If the institution contacts a citizen then the relations between the institutions and the citizen may be regulated only by referring to the Satversme , the laws or the Cabinet of Ministers Regulations."

On July 1, 2003 the Law on the Administrative Proceedings will take effect. Its Article 11 also envisages the above principle (the principle of excuse). In accordance with the above Article, an institution may pass an administrative act or carry out an activity, which is **unfavorable** for a person only on the basis of the Satversme, the laws and international legal norms.

This principle is also incorporated into the Cabinet of Ministers April 30, 1996 Regulations No. 160 " Regulations of the Internal Order and Activities of the Cabinet of Ministers". Item 8 of the Regulations establishes that the Cabinet of Ministers instruction which may **worry** its addressee and the contents of which includes a limitation or prohibition may be passed only in compliance with the Satversme, the

laws or the Cabinet of Ministers regulations. In its turn Item 9 determines that the Cabinet of Ministers instruction, **favorable** to the addressee, may be passed also on issues not regulated with a legal norm. However it may not contradict the Satversme, the laws or the Cabinet of Ministers regulations.

Regulation of the relations between the state and the imprisoned persons by internal normative acts is permissible only if the consequences of the above regulation are not unfavorable to the imprisoned persons.

3. It follows from the Ministry of Justice information on the amount of food parcels before the prohibition that it is essential for the imprisoned persons to receive additional food. Almost half of the imprisoned persons may not buy food at the prison shop because their relatives cannot send money to them. Before the prohibition the relatives could **supply** them with food grown in their farms or bought cheaply.

The Ministry of Justice information on the connection of the received food and infectious diseases as well as circulation of narcotics and psychotropic substances in the prisons is not sufficient to evaluate the importance of the prohibition in solving the above problem.

The Constitutional Court holds that reference of the Ministry of Justice to the practice of the developed states is groundless, as these states are able to insure such conditions for their imprisoned that additional food is not necessary.

For the imprisoned persons, whose relatives cannot send money to them, consequences of the prohibition to receive food parcels, are unfavorable.

4. The Transitional Provisions do not regulate the issue on deliveries and parcels for the imprisoned persons. The norm, incorporated into Item 8, contains only delegation to the Department of Imprisonment Places of determining the amount and assortment of food, which the imprisoned persons may keep.

As the applicants have not requested the Constitutional Court to evaluate the allowed amount and assortment of food, constitutionality of the Transitional Provisions was not reviewed.

5. Prohibition of receiving food parcels follows from the 1st. Supplement of the Regulations of the Internal Order, which envisages that the imprisoned persons shall keep only the food purchased at the prison

shop. Thus the Regulations of the Internal Order determine not only the amount and assortment of the food the imprisoned persons may keep, but also the way of obtaining it.

The norm of the Internal Order, determining the prohibition on receiving food parcels, has been passed *ultra vires* (by violating the limit of authority).

6. On February 12, 1987 the Committee of Ministers of the European Council adopted Recommendation No. R(87)3 "Regulations of the European Places of Imprisonment" (henceforth – Regulations of the European Places of Imprisonment) and recommended the Member States of the European Union to be guided by the principles expressed in the Regulations. In the Explanatory Memorandum of the Regulations it is stressed that even though the formal status of the Regulations is to recommend guidelines to the administrations of imprisonment places, they charge the Member States, which have adopted the Regulations with strict moral and political duties.

Item 91 of the above Regulations determine that to persons, who are to be regarded as innocent to the moment their guilt has been proved, only those limitations may be permissible, which are necessary to carry out the activities of criminal procedure and guarantee the security of the place of imprisonment.

Thus, the state has to evaluate what limitations are permissible. The Federal Constitutional Court of the German Federative Republic in its March 14, 1972 Judgment has declared that the fundamental rights of the imprisoned persons shall be limited only by law or on the basis of the law (*see BVerfGE 33,1*).

By forbidding the detained persons to receive food parcels the Department of the Imprisonment Places, which is an executive institution, has groundlessly "broken into" the sector of legislation and violated Article 64 of the Satversme, which determines that the right of legislation shall belong to both the Saeima and to the People, within the procedure and extent provided for in the Satversme. (*see March 11, 1998 Constitutional Court Judgment in case No. 04-05/97*).

Thus, limitation of the fundamental rights of the imprisoned persons is permissible only by law or on the basis of the law.

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

The Constitutional Court

decided:

to declare the Regulations of the Internal Order in Investigation Prisons, confirmed by the Department of Imprisonment Places May 9, 2001 Instruction No.63 in the Part on Prohibition of Receiving Food Parcels as unconfirmable with Article 64 of the Republic of Latvia Satversme.

The Judgment takes effect on the date of its publishing. The Judgment is final and allowing of no appeal.

The Chairman of the Constitutional Court session

J.Jelāgins