

Judgment by the Constitutional Court of the Republic of Latvia

On Behalf of the Republic of Latvia

Riga, 9 March 2010

Case No. 2009-69-03

The Constitutional Court of the Republic of Latvia composed of the Chief Justice of the Court session Gunārs Kūtris, and a panel of judges Kaspars Balodis, Aija Branta, Juris Jelāgins and Viktors Skudra

Having regard to the constitutional claim of Valters Raumanis and Mārtiņš Ēcis

Based on Article 85 of the Constitution of the Republic of Latvia and Clause 3 of Section 16, Clause 3 of the First Paragraph of Section 17, Section 19<sup>1</sup> and 28<sup>1</sup> of the Constitutional Court Law

On 9 February, 2010, heard the matter by way of written procedure

On the conformity with Article 111 of the Constitution of the Republic of Latvia of Appendix 1 of the Cabinet of Minister Regulations No. 1022 of 19 December 2006 on convicted persons nutritious diet and the material provision standards for ensuring the needs of convicted persons' daily life.

**Procedure and facts:**

1. On 19 December 2006 the Cabinet of Ministers of the Republic of Latvia (hereinafter – the Cabinet) adopted Regulations No. 1022 on convicted persons nutritious diet and the material provision standards for ensuring the needs of convicted persons' daily life (hereinafter – the Regulations). The Regulations came into effect on 23 December, 2006. Appendix 1 of the Regulations establishes nutritious diet standards for convicted persons, which differ for employed and unemployed convicted persons, minors, ill prisoners. The Amendments of the Regulations of 30 June, 2009 came into effect on 10 July, 2009. Those amendments established a new version of Appendix 1 of the Regulations. Currently the Regulations determine three types of daily nutritious diet:

- 1) Basic norm of daily nutritious diet;
- 2) Daily nutritious diet norm for minors;
- 3) Daily nutritious diet norm for ill prisoners.

No.	Product	Daily nutritious diet norm		
		No. 1	No. 2	No. 3
		Gross amount (grams)		
1.	Bread (made of pearled barley and rye flour)	200	200	200
2.	Bread (made of all purpose flour)	150	200	200
3.	All purpose flour	10	10	10
4.	Groat	90	90	70
5.	Macaroni	30	30	30
6.	Meat	80	100	100
7.	Fish (fresh, chilled and salted, without heads)	80	80	100
8.	Melted animal fat	15	10	15
9.	Vegetable oil	15	15	15
10.	Butter	–	20	20
11.	Milk	–	200	100
12.	Eggs	0,25	1	0,5
13.	Sugar	20	30	30
14.	Tea (natural)	1	1	1
15.	Salt	10	10	10
16.	Tomato	3	3	3
17.	Starch	–	1	1
18.	Potatoes	500	400	400
19.	Vegetables	300	300	400
20.	Dried fruits	–	15	15
21.	Seasoning	0,3	0,3	0,3
22.	Dry milk	20	40	40

In the amendments of 30 June, 2009 the basic norm of nutritious diet for unemployed and employed convicts has reduced in comparison with the previous

regulations. There is a reduction in the portions of bread, barley groats, macaroni, fish, melted animal fat, vegetable oil, eggs, potatoes and dry milk.

2. Claimants Valters Raumanis and Mārtiņš Ēcis (hereinafter – the Plaintiffs) state that Appendix 1 of the Regulations does not comply with Article 111 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

By adopting Article 111 of the Constitution the State has bound itself to protect the health of a person. Moreover, an essential part of protecting health is wholesome nutrition. The required amount of energy and nutrients has been established in a document approved by the Ministry of Welfare on recommended energy and nutrient intake for the inhabitants of Latvia (hereinafter – the Recommended Energy and Nutrient Intake).

The Plaintiffs consider that the previous nutritious diet norms were in compliance with the Recommendable Energy and Nutrient Intakes. As the norms have been decreased, they do not conform to those recommendable intakes. Deficiency of nutritious diet puts the Plaintiffs' health at risk because they do not consume the minimum amount of nutrients and vitamins required. Before adopting amendments, the consumption of nutrients and vitamins was provided at minimal levels as result of the Constitutional Court judgment in Case No. 2008-02-01.

The Plaintiffs refer to the termination of legal proceedings in Case No. 2005- 15-03. The legal proceedings in that case were terminated because the Cabinet adopted amendments that established daily amount of dry milk as 60 grams for all convicted person. Currently the daily amount of dry milk is only 20 grams.

The Plaintiffs emphasize that convicted persons are fully dependent on the State. Furthermore, not all convicted persons are employed; therefore they cannot buy extra food at their own expense. For that reason, extra food would not be needed, if the nutritious value of daily diet would be sufficient.

The Plaintiffs also stated that nutritious diet norms should be differentiated on basis of convicted person's age and state of health. It should be taken into account

that convicted persons, who are working, consume more energy than unemployed one's. The daily nutritious diet norms established in Appendix 1 of the Regulations do not provide the required minimal nutrient and vitamin norms for unemployed convicted persons, not mentioning employed convicted persons.

The Plaintiffs acknowledge that those amendments were adopted to preserve the State's budget due to economic crisis. Section 4 of European Council's recommendation Rec(2006)2 on European Prison Rules prohibits claiming lack of funds to justify violation of human rights.

The Plaintiffs, after looking through case files, indicate that the Recommendable Energy and Nutrient Intakes are established based on average ratios of a Latvian person's weight and height. It does not meet the individual needs of the Plaintiffs, since it does not correspond to their height, weight and daily physical activity level.

The Plaintiffs contest the Cabinet's statement that till the date the amendments of the Regulations came into force leftover bread was accumulating in prisons.

3. The Institution that issued the impugned regulation (the Cabinet) states that Appendix 1 of the Regulations complies with Article 111 of the Constitution.

The Cabinet indicates that one of the reasons for amendments was the fact that a large amount of food remained unused, including bread. Moreover, the daily norm of bread was disproportionate in comparison to the rest of nutritious amount of diet. The established nutritious diet norms for convicts were defined so that it would provide normal bodily functions and would be differentiated on the basis of convicted person's age, state of health and physiological characteristics. Convicts are fully provided for by the State and have 3 meals per day, which provide them with the required protein, mineral and vitamin amount and ensure normal bodily functions.

Before adopting the Regulations, daily nutritious diet norms were established in the Cabinet Regulations No. 155 of 9 April 2009 on standards for material

provision of daily needs and nutritious diet for convicted persons. These norms did not substantially differ. The impugned regulations were once already reviewed by the Constitutional Court, when it ruled on the termination of legal proceedings in Case No. 2005-15-03 and held that sufficient nutritious diet is provided for convicts.

According to Article 111 of the Constitution the State's responsibility is to provide healthcare and adequate nutritious diet corresponding to the State's economic resources. The aim of those amendments is to attain a balance between the interests of convicts to receive proper amount of nutritious diet and society's interests to use fair amount of resources to provide convicted persons. Thus, the legitimate aim of those amendments is the protection of the State's economic interests and the rights of the other persons. When funding for Latvian Prison Administration was reduced, all expenses were thoroughly evaluated in order not to save up mainly on social area, which includes provisions for nutritious diet for convicts.

In addition, the Cabinet indicates that convicts have access to shops in the prison, where they can buy products. The guaranteed amount of nutrition can be supplemented with other goods, which convicted persons can buy for themselves. Convicts are allowed to receive money transfers. Thus, convicts are able to improve their state of health at the highest possible level.

As a response to queries of the Constitutional Court the Cabinet states that in Appendix 1 of the Regulations declared daily nutritious diet norms provide convicted persons with wholesome nutrition. It was not necessary to compensate with other products the decrease of amount of daily bread. Till 30 June 2009 the nutritious diet norms exceeded the Recommendable Energy and Nutrient Intakes. The recommendable amount for adult men is 2400 kilocalories. Before the amendments nutritious diet norm was 2868 kilocalories for unemployed prisoners and 2966 kilocalories for employed prisoners. Currently norms established in Appendix 1 of the Regulations ensure 2374 kilocalories, which is commensurate with the recommended calorie intake. Employed and unemployed convicts receive the same calorie amount and it is according to the Recommended Energy and

Nutrient Intake. As the daily nutritious diet norms provide prisoners with the required vitamin and nutrient intake for adults, it also ensures that employed convicted persons receive wholesome nutrition.

The Cabinet acknowledges that prisoners must be fully provided for by the State, and it is the State's responsibility to implement that. Provision for a proper nutritious diet, therefore, should not be based on a convicted person's personal options to buy products. In this case daily nutritious diet norms for convicted persons ensure required intake of vitamins and nutrients to maintain a healthy state.

4. The invited person - The Ministry of Health of the Republic of Latvia (hereinafter – the Ministry of Health) – informed that it was calculated that on a daily basis convicted persons receive 2319.21 kilocalories. Daily intake of protein is 87.46 g, which is 15 E%<sup>1</sup> of total food energy ingested (norm is 10 -15 E%), fat is 59.12 g, which is 23 E% (norm is 25 – 30 E%), and carbohydrate 356.18 g, which is 62 E% (norm is 50 – 60 E%).

Consumed are 51.23 g of dietary fibers (norm is approximately 35 g) and 5109 mg of sodium (norm is approximately 3300 mg), 4638 mg of potassium (norm is approximately 4000 mg), 20 mg of iron (norm is approximately 10 mg), 1603 mg of phosphorus (norm is approximately is 1000 mg), 30 micrograms of selenium (norm is approximately 60 µg), 14 600 µg of Vitamin E (norm is approximately 12 000 µg), and 450 µg of folic acid (norm is approximately 300 µg).

The intake of calcium is lower than recommended (521 mg instead of advised 1000 mg). This could be increased by adding more dairy products to daily nutritious diet. The amount of Vitamin A and Vitamin C taken is insufficient: 138 µg instead of recommended 1000 µg Vitamin A and 29 mg instead of advised 100 mg Vitamin C. This is due to a lack of vegetables. The main sources of Vitamin A are butter, cheese, eggs, and “fatty” fish.

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<sup>1</sup> Total ingested food energy is calculated in percentage. [*Translator's remark.*]

The Ministry of Health concludes that altogether daily nutritious diet norms are commensurate with recommended nutrient and vitamin intakes. Employed convicts, moreover, receive proper energy and nutrient amount. Specialists from Riga Stradiņš University [RSU] indicate that the amount of the particular nutrients can be increased by adding, for example, more dairy products to daily nutritious diet.

5. The invited person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – states that Article 111 of the Constitution establishes convict's right to receive wholesome nutrition. Basic rights guaranteed under Article 111 of the Constitution, however, may be restricted to protect other values of the Constitution, including basic rights of other persons and democratic State system. Such restriction shall be legitimate and commensurate with the cause.

The Ombudsman indicates that for not providing maximum social rights for people the State cannot allege lack of funds, even if the State is going through economic crisis. The State, therefore, is obligated to provide wholesome nutrition to convicts, which would maintain the healthy state of being.

Decrease of daily nutritious diet norms cannot be in conflict with Article 111 of the Constitution if the decreased amounts are reasonable and does not put at risk convict's health in the long-term. While evaluating the impugned regulations it should be considered whether daily nutritious diet norms for unemployed prisoners, who do not have a chance to buy extra products, are sufficient to ensure a state of good health for them.

Regularly personnel in the Ombudsman office visit prisons. From these visits it is concluded that a lot of prisoners do not receive financial support from relatives and do not work, therefore, cannot buy products for themselves. Lately the Ombudsman has received several complaints about insufficient daily nutritious diet in prisons.

In addition to the aforementioned, the Ombudsman points out that a lack of wholesome nutrition in the long-term may cause not only a violation of Article

111 of the Constitution, but also a violation of Article 95 of the Constitution (prohibition of inhuman treatment).

The Ombudsman indicates that during the visits of the European Council Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – the Committee for the Prevention of Torture) paid attention to the amount, quality and diversity of nutritious diet in Latvian prisons. The Committee for the Prevention of Torture indicates that the administration of prison is responsible for providing a diet corresponding to convict's age, state of health and employment. An interval between meals should not be too long. It is inadmissible that convicted persons could suffer from insufficient nutrition.

6. The invited person – the Latvian Centre for Human Rights (hereinafter – LCHR) – states that nutrition is the main source of energy. The State is obligated to provide convicted persons with such amount of nutritious diet that would ensure a state of good health and energy level. With a reference to the case *Kadiķis v. Latvia* (the European Court of Human Rights judgment of 4 May 2006) LCHR states that the State authority's responsibility within the provision of maintaining the state of good health and overall well-being is to ensure proper daily nutritious diet for convicts.

LCHR points out that before adopting the impugned regulations the State had already calculated the required minimum of nutrients and vitamins, which would not put at risk a person's health. It can be concluded that by reducing these norms convicts would not receive a proper and balanced nutritious diet.

**Considerations:**

7. The Constitutional Court assessed whether Appendix 1 of the Regulations complies with Article 111 of the Constitution. In that Appendix three types of daily nutritious diet norms are determined: basic norm of daily nutritious diet, daily nutritious diet norm for minors and daily nutritious diet norm for ill convicts. The case files confirm the fact that only basic norm of daily nutritious diet is applicable to the Plaintiffs (see page 88 of the case file).



According to Clause 11 of Paragraph 1 of Section 17 and Section 19<sup>2</sup> of the Constitutional Court Law a person can complain only regarding violation of his/her rights guaranteed under the Constitution. Pursuant to the Plaintiffs' claim they only impugn the compliance of daily nutritious diet norms with Article 111 of the Constitution.

Hereby only the compliance with Article 111 of the Constitution should be reviewed.

**8.** Article 111 of the Constitution states: "The state protects the health of people and guarantees to everyone a minimum of medical assistance."

**8.1.** The Constitutional Court has already stated that this norm does not implicate a person's right to be healthy and the State's responsibility to attain the highest state of health for everyone. Right to health, however, contains particular freedoms and rights. Freedom means one's control of his/her body and health. The Constitutional Court has also indicated the action one can carry out for maintaining a healthy state. Rights, however, mean the State's responsibility to create and implement a proper healthcare system. Furthermore, the right to health consists of the State's responsibilities of providing for such services and other circumstances, which affect one's chances to attain the highest state of health (see paragraph 1 of considerations of the Constitutional Court judgment in Case No. 2002-04-03 of 22 October 2002, paragraph 6 of the Constitutional Court judgment in Case No. 2003-15-0106 of April 2004, paragraph 11.2 of the Constitutional Court judgment in Case 2008-37-03 of 29 September 2008).

From Article 111 of the Constitution emerges the State's obligation to consider, protect and provide the right to health for a person. Obligation to consider the right to health means that the State shall refrain from interference in one's rights and freedom. Thus, the State shall also refrain from such actions that would restrict options for a person to take care of his/her own health. Obligation to protect the right to health means that the State shall protect from other person's interference in implementing one's basic rights. Obligation to provide the right to

health means that the State shall carry out actions to implement basic rights (see paragraph 1 of considerations of the Constitutional Court judgment in Case 2008-37-03 of 29 September 2008).

**8.2.** First of all, the Constitutional Court must evaluate whether the impugned regulation refers to Article 111 of the Constitution.

In order to clarify the content of Article 111 of the Constitution, Latvia's international obligations in the area of human rights should be considered. International human rights and its application at the constitutional level serve as an interpretative instrument to determine the content and volume of basic rights and the country's judicial principles (see paragraph 5 of considerations of the Constitutional Court judgment in Case No. 2004-18-0106 of 13 May 2005 and paragraph 11 of considerations of the Constitutional Court judgment in Case No. 2007-03-01 of 18 October 2007).

Article 12 of the International Covenant on Economic, Social and Cultural Rights declares that member countries of this Covenant acknowledge a person's right to attain the highest possible level of physical and mental health. In UN Committee on Economic, Social and Cultural Rights General Comment No. 14: The right to the highest attainable standard of health (hereinafter – General Comment No. 14) it is stated that the right to health is not only a right to appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions. Thus, one of the State's responsibilities is to provide equal access to underlying determinants of health, including nutritionally adequate nourishment. Regardless of its economic situation, the State's duty is to ensure access to minimum essential food, which is nutritionally adequate and safe, to ensure freedom from hunger to everyone (see paragraphs 11, 36 and 43 of the General Comment No. 14).

The Constitutional Court has already acknowledged the connection between protection of health and nutrition (see paragraph 6 of the Constitutional Court judgment in Case No. 2003-15-0106 of 23 April 2004). Wherewith, the State's

duty is to provide people with food and proper nutrition. This duty includes the obligation to provide convicts with proper nutritious diet. The Constitutional Court has already indicated the convicted person's right to proper nutrition (see paragraph 1 of the Constitutional Court judgment in Case No. 2002-04-03 of 22 October 2002).

**8.3.** The right to health is a part of social rights. The Constitutional Court has acknowledged that the volume of the State's duties is subjected to the State's resources while providing that right (see paragraph 12.1.2 of the Constitutional Court judgment in Case No. 2008-37-03 of 29 September 2008). The State has the freedom to choose how it will fulfil its obligations within limited resources. This freedom, however, is not unlimited. The duty to provide convicts with proper nutritious diet does not allow departure from fulfilling it and this restricts the State's freedom of action. The European Court of Human Rights has indicated that from Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) emerges the duty to provide a convict with a proper nutritious diet (see paragraph 55 of the European Court of Human Rights judgment in Case *Kadiķis v. Latvia* of 4 May 2006, application no. 62393/00). In accordance with consistent European Court of Human Rights practice, the restrictions on Article 3 of the Convention on torture and inhuman treatment are absolute and no deviation is acceptable, contrary to other norms of that Convention. The related rights, therefore, shall not be limited (see paragraphs 127 and 137 of the European Court of Human Rights judgment in Case *Saadi v. Italy* of 28 February 2008, application no. 37201/06). Wherewith, convict's right to proper nutritious diet as far as concerning rights guaranteed under Article 3 of the Convention should not be limited.

Several international documents cover the State's duties to provide a convict with a proper nutritious diet.

Paragraph 20 of Standard Minimum Rules for the Treatment of Prisoners<sup>2</sup> establishes the duty of the prison's administration to provide every convict with regular meals on time, which would ensure required nutritional value for one's health and strength.

The Committee for the Prevention of Torture, which oversees compliance with the provisions of the Convention, has indicated that convicted persons should be provided with regular meals at appropriate time, including at least one full meal. Furthermore, sufficient quality and quantity of food must be ensured and served properly, including suitable temperature and utensils (see pages 7, 13 and 59 of the CPT standards, "Substantive" sections of the CPT's General Reports, CPT/Inf/E (2002) 1, Rev. 2009).

Paragraph 25 of the recommendation letter (No. R(87)3, 12 February 1987) on the European Prison Rules of the Committee of Ministers of the Council of Europe (hereinafter – the Committee of Ministers) reviews the same principles established in Paragraph 20 of Standard Minimum Rules for the Treatment of Prisoners. That clause also determines that nutrition should be commensurate with convict's age, state of health, employment type, and with religious and cultural requirements, if possible.

Paragraph 22 of the Committee of Ministers' recommendation Rec(2006)2 on the European Prison Rules (hereinafter – the European Prison Rules) determines that convicts shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. Food shall be prepared and served hygienically and there shall be three meals a day with reasonable intervals between them. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.

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<sup>2</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. [*Translator's remark.*]

The Constitutional Court has already indicated that the State is obligated to provide convicted persons with proper nutrition to maintain a healthy state (see paragraph 10 of the Constitutional Court judgment in Case No. 2003-15-0106 of 23 April 2004). It should be taken into account that convicts are fully provided for by the State. Not all convicts are provided with work and they do not have an opportunity to receive additional food. Majority of prisoners, therefore are dependent on the nutrition provided by the State. For that reason, the State is obligated to provide convicts with a proper nutritious diet which would not harm their state of health in the long-term.

Consequently, the Constitutional Court shall assess whether the State has fulfilled its duty, derived from Article 111 of the Constitution, to provide convicts with a proper nutritious diet.

9. The Cabinet in its reply indicates that the impugned regulations have already been assessed in the Constitutional Court judgment in Case No. 2005-15-03 of 25 October 2005. Such consideration of the Cabinet is unfounded.

In the present Case the Plaintiffs refer to the Constitutional Court judgment in Case No. 2003-15-0106 of 23 April 2004. In that particular matter the Constitutional Court holds that the daily nutritious diet norms lack calcium due to deficiency of dairy products. The Cabinet responded to that judgment and supplemented convicted person's daily nutritious diet norms with 60 grams of dry milk.

As the Cabinet altered the impugned regulations, the Constitutional Court terminated the legal proceedings in that case by the judgment of 25 October 2005. In that particular case the daily nutritious diet norms were not assessed on its merits.

10. The Plaintiffs' reference to the Constitutional Court judgment in Case No. 2008-02-01 of 21 October 2008 is unfounded, as well as their statement that decreasing the daily nutritious diet norms is unacceptable because those norms do not comply with the Recommendable Energy and Nutrient Intakes. In that judgment, while

assessing the significance of vacation, the Constitutional Court only indicated that the salary allows convicted persons to buy extra food. Hereby, the Constitutional Court has not assessed the daily nutritious diet norms established in Appendix 1 of the Regulations.

- 11.** Rule 22.2 of the European Prison Rules states: “The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law”. Although, those Rules are not juridically binding, the regulation of those Rules is permissive and at the same time authoritative and recommends implementation of the most optimal model for resolving issues (see paragraph 10.2 of the Constitutional Court judgment in Case No. 2009-05-01 of 7 October 2009).

Paragraph 3 of Section 77 of the Sentence Execution Code of Latvia (hereinafter – the Code) states: “Convicts shall receive nutritious diets which ensure normal life functions of the organism.” Section 18 of the Law on the Procedures for Holding the Detained Persons establishes that detained person shall receive warm food three times a day, which ensures normal life functions of the organism, as well as drinking water at any time. By the above mentioned laws the Cabinet is delegated to define a convicts’ nutritious diet and the material provision standards. According to that delegation, the Cabinet has included in Appendix 1 the daily nutritious diet norms, which regulate the daily amount of food convicted persons receive. The Cabinet has altered these norms several times.

The Latvian legislation did not establish nutrient and food energy intake norms for convicted persons. Commentary on the European Prison Rules indicates that such national standards are very significant because they set monitoring guidelines for supervising institutions (see Commentary on Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules. Nutrition. Rule 22).

The Constitutional Court also emphasizes the importance of such norms. Nutrient and food energy intake norms for convicted persons are a fixed measure and cannot be influenced by economic situation. Rule 4 of the European Prison Rules

states as follows: “Prison conditions that infringe of prisoners’ human rights are not justified by lack of resources”. Therefore, the State cannot lower nutrient and food energy intake norms under the established minimum. The State must solve issues regarding limited resources using methods, which do not reduce those intake norms.

12. As the Legislator has not established nutrient and food energy intake norms for convicted persons, the Constitutional Court uses the Recommendable Energy and Nutrient Intakes to assess the legitimacy of impugned regulation. Those norms define the average recommended intake of food energy, nutrients, minerals, and vitamins for Latvians. The Recommendable Energy and Nutrient Intakes also established required intake of proteins, fat, carbohydrates, vitamins, and minerals for healthy people of every age group. Those intakes for men are calculated based on the average height (175 cm) and average weight (75 kg) of a Latvian man.

The Constitutional Court has already used the Recommendable Energy and Nutrient Intakes for assessing the daily nutritious diet norms (see the Constitutional Court judgment in Case 2003-15-0106 of 23 April 2004). Also, the Cabinet and the Ministry of Health used those norms as guidelines (see pages 42, 69–72, 141–142 of the case file). Those norms define 2400 kilocalories for men as the daily norm. The Ministry of Health, furthermore, has calculated that the daily nutritious diet norms provide convicted persons with 2319.21 kilocalories per day.

The Ministry of Health states that the daily nutritious diet norms comply with the Recommendable Energy and Nutrient Intakes. Intake of proteins, fat, carbohydrates, dietary fibers, sodium, potassium, iron, phosphorus, selenium, vitamin E and folic acid is adequate. The Ministry of Health, however, indicates the particular substances which do not conform to the Recommended Energy and Nutrient Intake: those are calcium, Vitamin C and Vitamin A.

Men should intake 1000 mg of calcium per day, however, the daily nutritious diet norms provide only with 521 mg of calcium. Specialists from Riga Stradiņš University [RSU] indicate that the amount of calcium can be increased by adding more dairy products to daily nutritious diet (see page 141 of the case file). The

Latvian Food Centre acknowledges that the daily nutritious diet norms are deficient (established in the Cabinet Regulations No. 330 of 6 August 2002 on norms of nutritious diet, washing and personal hygiene products for arrested, administratively arrested and detained persons). The lack of calcium was emphasized as the most important, and the Latvian Food Centre stated that deficiency of nutritious diet may put at risk one's health (see paragraph 10 of the Constitutional Court judgment in Case No. 2003-15-0106 of 23 April 2004). The Cabinet amended those regulations and the daily nutritious diet norm was supplemented with 60 g of dry milk. Thereof, the legal proceedings also were terminated in Case No. 2005-15-03.

By adopting the Regulations, the daily amount of dry milk was reduced to 30 g for both employed and unemployed prisoners. Currently the daily amount of dry milk is 20 g, which is three times less than what the initial daily was. It can be concluded that the Cabinet has limited the guarantees established in the above mentioned regulations (which was the reason to terminate legal proceedings in Case No. 2005-15-03). The current daily nutritious diet norm does not provide the proper amount of calcium intake.

The Ministry of Health points out that intake of Vitamin A and Vitamin C is lower than recommended. It is due to a lack of vegetables and fruit, which are the main sources of Vitamin C. Sources of Vitamin A are butter, cheese, eggs etc.

The Constitutional Court points out that prisoners are provided only with 30% of the required amount of Vitamin C, i.e., 29 milligrams instead of 100 milligrams. Moreover, amount of Vitamin A is only 14% of the required dose (138 micrograms instead of 1000 micrograms).

The Ministry of Health emphasizes that the data is approximate because nutritious diet norms do not specify what particular vegetables (also meat, fish and other products) are included. Furthermore, amount of vitamins in products changes after food is cooked. It should be considered that products included in the daily nutritious diet norms can be substituted with other products.



The Constitutional Court indicates that such products and cooking methods should be chosen which provide the largest amount of lacking vitamins and minerals. The State's duty is to provide convicts with a proper nutritious diet that corresponds to competent health prevention institutions' adopted documents.

- 13.** The Plaintiffs state that the daily nutritious diet norms do not meet individual needs of the Plaintiffs, corresponding to their height and weight. The height of both the Plaintiffs exceeds the average height ratio by 8 – 10 cm. Moreover, one of the Plaintiffs weighs considerably more. The Recommendable Energy and Nutrient Intakes are created according to the average weight and height ratios of Latvians and define average recommendable energy, nutrient, vitamin and minerals intake. All men regardless of height, weight, age and physical activity level are provided with the same daily nutritious diet amount.

In the prison there are no options to calculate daily energy consumption for each prisoner. Therefore, it is based on average ratios of daily energy consumption and required nutrition, vitamin and minerals, at the same time providing solution for special situations. For instance, Paragraph 4 of the Regulations defines that prisoners taller than 195 cm are provided with an additional 50% of the daily nutritious diet norm.

Hereby the Constitutional Court has not obtained affirmation of the fact that the Plaintiffs must be provided with larger amounts of daily nutritious diet than other prisoners.

- 14.** One of the Plaintiffs states that the daily nutritious diet norms do not comply with Article 111 of the Constitution because they establish the same amount of nutritious diet for both employed and unemployed prisoners. The Cabinet, however, states that the daily nutritious diet norms are commensurate to the Recommended Energy and Nutrient Intake and provide employed men with healthy nutrition (see page 73 of the case file).

According to Article 111 of the Constitution all prisoners, including those employed, must receive healthy nutrition and it is the State's duty to provide it. If

the daily nutritious diet norms would provide sufficient amount of nutrition for employed convicted persons, then Article 111 of the Constitution would not define larger energy and nutrition intakes. Hereby the fact that both employed and unemployed prisoners receive the same amount of nutrition does not violate guaranteed right to health under that Article.

The Recommended Energy and Nutrient Intake can be applied to all unconfined persons who are employed and indulge in average levels of physical activity. The Ministry of Health points out that it is possible to calculate required amount of energy corresponding to physical activity ratio for an individual. Persons, who indulge in forestry operations, road construction, agriculture or have sports trainings and competitions at least four times per week, require larger amount of daily nutrition (see page 83 of the case file). This kind of physical activity is not available in prisons.

While making the daily nutritious diet norms, the State should take into account Rule 22 of the European Prison Rules, which defines that prisoners shall be provided with a nutritious diet that takes into account the nature of their work. However, Paragraph 3 of Section 77 of the Code establishes that nutrition norms are differentiated by the nature of convict's work. The State, therefore, is obligated to provide proper nutritious diet for employed prisoners, whose physical activity level is above average.

- 15.** According to the above mentioned it can be concluded that the daily nutritious diet norm is sufficient and does not immediately put one's health at risk. Some vitamins and nutrients, however, are not provided according to the Recommendable Energy and Nutrient Intakes. As the Constitutional Court has already concluded that in the long-term it might harm one's health (see paragraph 10 of the Constitutional Court judgment in Case No. 2003-15-0106 of 23 April 2004). The State, therefore, is obligated to eliminate the disparity of the daily nutritious diet norms with the Recommended Energy and Nutrient Intake and Article 111 of the Constitution in order to keep the convicted persons healthy and provide proper and healthy nutritious diet in the long-term.

**16.** Ruling on the non-compliance of a norm with the Constitution, the Constitutional Court shall announce a date it is declared to be invalid. If the Constitutional Court would hold that the impugned regulation shall become null and void on the date a judgment comes into effect, the daily nutritious diet norms for convicts would not be controlled by any regulations. Such situation would violate rights of convicted persons more than the existence of the impugned regulation. The Constitutional Court, therefore, shall appoint a date till which the non-conformity to Article 111 of the Constitution must be eliminated. While ruling on the time from which the impugned regulation will be declared invalid, the Constitutional Court shall take into account that the State's authorities may require time to apply adequate amendments to regulations.

**Adjudication:**

Based on Section 30 – 32 of the Constitutional Court law, the Constitutional Court rules

Appendix 1 of the Cabinet of Minister Regulations No. 1022 of 19 December 2006 on the nutritious diet of convicts and the material provision standards for ensuring the needs of convicted persons' daily life does not comply with Article 111 of the Constitution and shall become null and void from 1 June 2010.

The judgment is final and not subject to appeal.

The judgment comes into effect on the day it is published.

The Chief Justice

G. Kūtris