



# THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on behalf of the Republic of Latvia

Riga 10 March 2022

in the case No. 2021-24-03

The Constitutional Court of the Republic of Latvia in the following composition: Presiding Judge Aldis Laviņš, Judges Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs and Anita Rodiņa, based on the applications filed by “Jysk Linnen’n Furniture”, the Limited Liability Company “VRPB”, and the Limited Liability Company “EftEN Domina”,

on the basis of Article 85 of the Constitution of the Republic of Latvia (Satversme) and Section 16, Paragraph Three, Section 17, Paragraph One, Clause 11, Sections 19<sup>2</sup> and 28<sup>1</sup> of the Constitutional Court Law,

adjudicated in the hearing on 8 February 2022 in written procedure the case

**“On compliance of Paragraph 24<sup>18</sup> of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording effective from 7 April to 1 June 2021) with the first sentence of Article 91 and the first and third sentence of Article 105 of the Constitution of the Republic of Latvia”.**

### The Establishing Part

1. On 5 June 2020, the Saeima passed the Law on the Management of the Spread of Covid-19 Infection (hereinafter referred to as – the Covid-19 Management Law), which entered into effect on 10 June 2020. In Section 4 of this law, the Saeima established the right of the Cabinet of Ministers to impose various restrictions for the purposes of epidemiological safety in the event of the spread or threat of the spread of Covid-19 infection.

On 9 June 2020, the Cabinet of Ministers issued Regulation No. 360 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection" (hereinafter referred to as – Regulation No. 360), which entered into effect on 10 June 2020. This Regulation governed various measures for containment of the spread of Covid-19 infection.

On 23 February 2021, the Cabinet of Ministers issued Regulation No. 125 "Amendments to the Cabinet Regulation No. 360 of 9 June 2020 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection"" (hereinafter referred to as – Regulation No. 125), which entered into effect on 25 February 2021. Pursuant to Paragraph 2 of Regulation No. 125, Regulation No. 360 was supplemented by Paragraph 24<sup>18</sup>, which stipulated the requirements for the provision of beauty services.

By the Cabinet Regulation No. 191 of 1 April 2021 "Amendments to the Cabinet Regulation No. 360 of 9 June 2020 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection"" (hereinafter referred to as – Regulation No. 191), which entered into effect on 7 April 2021, Paragraph 24<sup>18</sup> of Regulation No. 360 was reworded and restricted the operation of shopping centres. Thus, Paragraph 24<sup>18</sup> of Regulation No. 360, in the wording effective from 7 April to 9 April 2021 (hereinafter referred to as – the contested norm 1) stipulated the following:

“24<sup>18</sup> In a shopping centre with the total sales area of more than 7,000 m<sup>2</sup>, only the following trading sites shall operate:

24<sup>18</sup> 1 Shops selling foodstuffs in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 2 Shops selling hygiene products in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 3 Pharmacies (including veterinary pharmacies);

24<sup>18</sup> 4 Optical goods shops;

24<sup>18</sup> 5 Animal feed shops;

24<sup>18</sup> 6 Flower shops;

24<sup>18</sup> 7 Bookstores;

24<sup>18</sup> 8 Press outlets.”

The Cabinet of Ministers amended Paragraph 24<sup>18</sup> of Regulation No. 360 by Regulation No. 208 of 8 April 2021 "Amendments to the Cabinet Regulation No. 360 of 9 June 2020 "Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection"" , which entered into effect on 10 April 2021,

and supplemented this Paragraph by Sub-paragraph 9. Paragraph 24<sup>18</sup> of Regulation No. 360 in the wording effective from 10 April to 19 May 2021 (hereinafter referred to as – the contested norm 2) stipulated the following:

“24<sup>18</sup> In a shopping centre with the total sales area of more than 7000 m<sup>2</sup>, only the following trading sites shall operate:

24<sup>18</sup> 1 Shops selling foodstuffs in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 2 Shops selling hygiene products in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 3 Pharmacies (including veterinary pharmacies);

24<sup>18</sup> 4 Optical goods shops;

24<sup>18</sup> 5 Animal feed shops;

24<sup>18</sup> 6 Flower shops;

24<sup>18</sup> 7 Bookstores;

24<sup>18</sup> 8 Press outlets;

24<sup>18</sup> 9 Shops selling computers, computer peripherals and software, and shops selling telecommunications equipment.”

By Cabinet Regulation No. 309 of 18 May 2021 “Amendments to Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection””, which entered into effect on 20 May 2021, Paragraph 24<sup>18</sup> of Regulation No. 360 was supplemented by Sub-paragraph 10. Thus, Paragraph 24<sup>18</sup> of Regulation No. 360, in the wording effective from 20 May to 9 June 2021 (hereinafter referred to as – the contested norm 3) stipulated the following:

“24<sup>18</sup> In a shopping centre with the total sales area of more than 7000 m<sup>2</sup>, only the following trading sites shall operate:

24<sup>18</sup> 1 Shops selling foodstuffs in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 2 Shops selling hygiene products in the volume of not less than 70% of the range of goods;

24<sup>18</sup> 3 Pharmacies (including veterinary pharmacies);

24<sup>18</sup> 4 Optical goods shops;

24<sup>18</sup> 5 Animal feed shops;

24<sup>18</sup> 6 Flower shops;

24<sup>18</sup> 7 Bookstores;

24<sup>18</sup> 8 Press outlets;

24<sup>18</sup> 9 Shops selling computers, computer peripherals and software, and shops selling telecommunications equipment;

24<sup>18</sup> 10 Shops where buyers have a separate external access (external entrance) to the point of sale.”

Paragraph 24<sup>18</sup> of Regulation No. 360 was deleted from this Regulation by Regulation No. 335 of the Cabinet of Ministers of 1 June 2021 “Amendments to Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection”” (hereinafter referred to as – Regulation No. 335) and expired on 2 June 2021. Regulation No. 360 expired on 11 October 2021, when Cabinet Regulation No. 662 of 28 September 2021 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” entered into effect.

According to Sub-paragraph 2.12 of Regulation No. 360, a shopping centre is a building that has been arranged for permanent and systematic trade with the total area of at least 1,500 m<sup>2</sup> dedicated to trade in which at least five trade participants or service providers are operating at individual trading sites; Thus, both the contested norm 1, contested norm 2 and contested norm 3 (hereinafter jointly referred to as – the Contested Regulation) provided for that only the shops falling within the categories specified in the Sub-paragraphs of these norms may operate in a shopping centre with the total area dedicated for trade exceeding 7,000 m<sup>2</sup> (hereinafter referred to as – the large shopping centre).

2 Three cases were initiated before the Constitutional Court on the constitutionality of the regulation on the operation of the large shopping centres contained in Regulation No. 360:

1) On 7 June 2021, upon the application of the Limited Liability Company “Jysk Linnen'n Furniture”, Case No. 2021-24-03 “On compliance of Paragraph 24<sup>18</sup> of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording effective from 7 April to 1 June 2021) with the first sentence of Article 91 and the first and third sentence of Article 105 of the Constitution of the Republic of Latvia” was initiated;

2) On 22 June 2021, upon the application of the Limited Liability Company “VRPB”, Case No. 2021-29-03 “On compliance of Paragraph 24<sup>18</sup> of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording effective from

7 April to 1 June 2021) with the first sentence of Article 91 and the first and third sentence of Article 105 of the Constitution of the Republic of Latvia” was initiated;

3) On 6 September 2021, upon the application of the Limited Liability Company "EFTEN Domina", Case No. 2021-37-03 “On compliance of Paragraph 24<sup>18</sup> of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording effective from 7 April to 1 June 2021) with the first sentence of Article 91 and the first and third sentence of Article 105 of the Constitution of the Republic of Latvia” was initiated.

In order to facilitate a more comprehensive and expeditious trial of these cases, they were merged into one case in accordance with Section 22, Paragraph Six of the Constitutional Court Law. The merged Case No. 2021-24-03 was titled “On compliance of Paragraph 24<sup>18</sup> of the Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” (in the wording effective from 7 April to 1 June 2021) with the first sentence of Article 91 and the first and third sentence of Article 105 of the Constitution of the Republic of Latvia”.

**3 The Applicant, Limited Liability Company “Jysk Linnen'n Furniture”** (hereinafter referred to as – LLC (SIA) “Jysk”), maintains that the contested norm 1 and the contested norm 2 are non-compliant with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution, as they unjustifiably prevent the operation of shops of a large shopping centre which may be provided with a separate external access.

The LLC (SIA) “Jysk” is a commercial company operating in the field of retail trade of furniture, lighting equipment and other household accessories in specialised shops. The company’s shops are mainly located in the large shopping centres. These shops can also be provided with separate entrances and allegedly be cordoned off from the remaining area of the shopping centre. However, the contested norm 1 and the contested norm 2 have completely prevented the operation of these shops in the large shopping centres, including the possibility to hand out the goods sold under the distance contracts.

The contested norm 1 and the contested norm 2 are allegedly non-compliant with the principle of legal equality contained in the first sentence of Article 91 of the Constitution (Satversme). All the traders which are not subject to the

exceptions provided for in the contested norm 1 and in the contested norm 2 are allegedly under equal circumstances comparable by certain criteria, where they:

- 1) operate in the large shopping centres, but are able to cordon off their place of business from the remaining area of the shopping centre and provide a separate entrance;
- 2) carry out their activities in a building containing at least five traders or service providers, but with a floor area of less than 7,000 m<sup>2</sup>;
- 3) operate in a building with a floor area of at least 7,000 m<sup>2</sup> and where less than five traders or service providers operate;
- 4) operate in a concentrated trading place which is not contained in a single common building but which has a surface area of at least 7,000 m<sup>2</sup> and in which at least five traders or service providers operate.

The contested norm 1 and the contested norm 2 impose prohibitions only on the traders which carry out their activities in the large shopping centres. This creates a difference in treatment of groups of persons which are under equal circumstances comparable by certain criteria.

Such a different attitude in treatment is not established by a legal norm adopted in the manner prescribed by the laws and regulations, since the regulation contained in the contested norm 1 and the contested norm 2 is not sufficiently well considered. Under the circumstances of emergency situation related to the spread of Covid-19, the Cabinet of Ministers is entitled to develop legal framework on the basis of reasonable assumptions and without carrying out a detailed analysis of each issue. However, that right does not apply to the contested norm 1 and the contested norm 2, since they regulated trade after the emergency situation. Moreover, before their entry into effect, trade restrictions had remained unchanged for a relatively long time. The purpose of Regulation No. 191 was to ease trade restrictions, not to react to sudden changes in circumstances. The Cabinet of Ministers should also have taken into account other restrictions on trade and the ability of traders to ensure compliance with epidemiological safety requirements, as well as considered the possibility of more detailed regulation and assessed different alternatives. Although the Cabinet of Ministers decided that traders operating in the large shopping centres should be allowed to operate online, the Cabinet has not ascertained whether such an operating regime is practicable.

The objective of limiting people's mobility and public transport congestion can be recognised as legitimate. However, the prohibition contained in the contested norm 1 and the contested norm 2 was not necessary, since that objective

could have been achieved to the same quality without unequal treatment of comparable groups of persons, namely, by stipulating that traders which are able to cordon off their points of sale from the remaining area of the large shopping centre and use a separate external access may continue their activities. Furthermore, epidemiological safety requirements were intended for both trade and the use of public transport. There is no connection between the contested norm 1 and the contested norm 2 and the pressure on public transport, since buyers had access to other traders offering similar goods but operating outside the large shopping centres.

By the contested norm 1 and the contested norm 2, the trader's right to own property contained in the first and the third sentences of Article 105 of the Constitution was also restricted, since the trader was prohibited from disposing freely of its own property as a result of the prohibition established in the contested norm 1 and the contested norm 2. This restriction of fundamental rights was not established by a legal norm adopted in accordance with the procedures provided for by laws and regulations, nor was it appropriate to relieve pressure on public transport for the same reasons mentioned in relation to compliance of the contested norm 1 and the contested norm 2 with the first sentence of Article 91 of the Constitution. That restriction was also unnecessary, since its objectives could have been achieved equally efficiently by allowing those traders which were able to cordon off their points of sale from the remaining area of the large shopping centre, to use separate external access and to ensure compliance with the epidemiological safety requirements to continue operation. The restriction of fundamental rights is also inappropriate, since the Cabinet of Ministers has failed to strike a fair balance between the interests of the public and those of the LLC (SIA) "Jysk" . According to publicly available information and studies, SARS-CoV-2 virus is mainly transmitted by contact with droplets released from respiratory tract, not air. Thus, general trade restrictions and the aforementioned alternative means would have ensured that the likelihood of the virus spreading is not high.

In its additional explanations, the LLC (SIA) "Jysk" points out that it has received financial support within the framework of the state aid measures established by the Cabinet of Ministers and intended for the merchants affected by Covid-19 crisis. Infringement of the company's fundamental rights occurred between 7 April 2021 and 19 May 2021, when the contested norm 3 entered into effect. In assessing whether a balance has been struck between the interests of the LLC (SIA) "Jysk" and the public, extent of the restrictions which have affected the

commercial company and its competitors, as well as the amount of state aid it has received must be taken into account. The amount of state aid granted to the commercial company is allegedly not proportionate to the restrictions imposed thereon. Moreover, its competitors were not affected by the restrictions. The amount of state aid is not sufficient to cover the losses caused by the restrictions and the state aid measures are primarily aimed at protecting employees, not employers. Thus, the state aid measures prevent from achieving a fair balance between the interests of the LLC (SIA) “Jysk” and the public. The state is allegedly obliged to compensate the LLC (SIA) “Jysk” for the losses it has suffered in a fair amount.

**4 The Applicant, Limited Liability Company “VRPB”** (hereinafter referred to as – LLC (SIA) “VRPB”), maintains that the Contested Regulation is non-compliant with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.

The LLC (SIA) “VRPB” is the owner of the large shopping centre “Valleta”, and as a part of its business activities it rents out the premises of the shopping centre to trade operators and service providers. The Contested Regulation has significantly restricted retailers operating in the large shopping centres, which are not subject to the exemptions referred to in the Contested Regulation. Thus, the Contested Regulation allegedly excludes lessors of the large shopping centres, including the LLC (SIA) “VRPB”, from the market, since lessees of the large shopping centres which are not able to carry out commercial activities are unable to pay the rent and are forced to leave the premises, while new lessees find the premises unattractive. Consequently, the Contested Regulation essentially prohibits the operation of the large shopping centres and infringes the right of the lessors of the large shopping centres to own property. All the lessors of commercial premises are in the same actual and legal circumstances, however, the Contested Regulation has allegedly unjustifiably caused differential treatment of the lessors depending on whether they rent out premises of a large shopping centre or other commercial premises.

The Contested Regulation restricts the right of the owner of a large shopping centre to own property contained in the first and third sentences of Article 105 of the Constitution, as the owner is unable to benefit from already concluded lease agreements, as well as to conclude new lease agreements for the vacant points of sale. Due to the Contested Regulation, the owner allegedly cannot dispose of its

property and is forced to suffer losses. The Contested Regulation also allegedly has a significant adverse impact on the possibility of fully restoring commercial activity due to changes in purchasers' habits resulting from such a regulation.

The Contested Regulation has allegedly infringed the principle of legal equality contained in the first sentence of Article 91 of the Constitution. Lessors of the space of the large shopping centres are allegedly under equal circumstances comparable by certain criteria with the remaining lessors of commercial premises. The Contested Regulation has restricted the activities of lessees of premises in the large shopping centres only, as a result of which losses were caused to the lessors of space of the large shopping centres, and their competitiveness was undermined. Thus, the Contested Regulation allegedly causes differential treatment of the aforementioned groups of lessors of commercial premises.

This differential treatment allegedly was not established by a legal norm adopted in accordance with the procedures laid down in laws and regulations, since the Cabinet of Ministers had not complied with the principle of good law-making. In particular, the Cabinet of Ministers, when drafting the Contested Regulation, allegedly relied only on general opinions of officials, not on scientific studies or measurements substantiating the impact of such regulation on the spread of SARS-CoV-2, and failed to carry out a comprehensive assessment of the situation, which was necessary taking into account the significant impact of the Contested Regulation on commercial activities. Moreover, the Cabinet of Ministers has allegedly failed to ensure timely information of the public and sustainability or stability of the legal framework, as it has failed to stipulate that the Contested Regulation is effective for a certain period of time and failed to link its effect to specific indicators characterising epidemiological safety. By failing to ensure stability and predictability of the legal regulation, as well as a sufficiently long and lenient transitional period before the entry of the contested norm into effect, the Cabinet of Ministers has also infringed the principle of legitimate expectations. The contested norm 1 was allegedly drafted and adopted well after the beginning of the pandemic, so the Cabinet of Ministers could have drafted it in more thorough and timely manner, including by using the observations and information already accumulated during the pandemic.

The difference in treatment established by the Contested Regulation was allegedly aimed at reducing the risk of spread of SARS-CoV-2 by restricting the gathering of people in the large shopping centres and relieving pressure on public transport to protect public health. However, this objective – the protection of public

health – may not be recognised as legitimate, as it is not explicitly stated in Article 116 of the Constitution.

The difference in treatment is allegedly not appropriate to achieve the referred to legitimate goal, since the Contested Regulation establishes a general prohibition without assessing the individual circumstances of each individual point of sale, which may differ significantly. Epidemiologically safe environment can be allegedly provided in the large shopping centres in efficient manner than in individual points of sale, which are smaller and may have lower air quality. Recent scientific researches show that, from the epidemiological safety viewpoint, indoor air quality and size of the premises are of much higher importance. Furthermore, the fact that the functional layout of shopping centres may vary and have an impact on visitors' flow should also be taken into account. There is no reason to consider that the Contested Regulation would allow to relieve pressure on public transport, since most visitors travel to the large shopping centres by private vehicle, on foot or by bicycle. Furthermore, people could travel to the large shopping centres by public transport to visit the shops the operation of which was not prohibited by the Contested Regulation. It should also be taken into account that the laws and regulations had set restrictions on the permissible capacity of public transport.

It is allegedly not clear what criteria were used to determine the points of sale which were allowed to continue operation in the large shopping centres in the Contested Regulation. It is allegedly also unclear why the Cabinet of Ministers did not restrict the activities of service providers in the large shopping centres. The annotation to the Regulation No. 191 states that shopping centres are used as places of entertainment and leisure. However, Paragraph 14<sup>2</sup> of the Regulation No. 360 has allegedly already prohibited the provision of entertainment services. The statistical data on Covid-19 incidence rates also shows that the restrictions contained in the Contested Regulation did not achieve their goal.

This legitimate goal could be achieved to the same quality by other, less restrictive means, such as stricter conditions for epidemiologically safe trade in the large shopping centres, such as a lower permitted maximum number of visitors or limited opening hours, and appropriate air quality requirements. No other European country has allegedly determined a legal framework similar to the Contested Regulation. Moreover, the benefit to society caused by the difference in treatment resulting from the Contested Regulation allegedly does not outweigh the harm caused to the individual. The Contested Regulation has not reduced the mobility or gathering of people in the large shopping centres and therefore not

reduced the risks of spread of SARS-CoV-2. On the contrary, the Contested Regulation has forced people to go to smaller shops with epidemiologically less safe environment and to visit several different points of sale in order to purchase all the goods which are normally available at one place – large shopping centre. Moreover, the Contested Regulation allegedly distorts competition, causes losses to merchants, increases unemployment, reduces the state budget revenue, necessitates the state aid and places additional burden on judicial system in relation to rent disputes and insolvency proceedings.

The Contested Regulation allegedly did not allow the owner of the large shopping centre to freely dispose of its real estate – the large shopping centre. This has caused adverse consequences – reduced revenues and losses. Thus, the Contested Regulation has allegedly restricted the right of the owner of a large shopping centre to own property contained in the first and third sentences of Article 105 of the Constitution. This restriction of fundamental rights is allegedly not established by a legal norm adopted in accordance with the procedures laid down in laws and regulations, it may not have a legitimate goal, and it also does not comply with the principle of proportionality for the same reasons as those mentioned in relation to compliance of the Contested Regulation with the principle of equality contained in the first sentence of Article 91 of the Constitution.

In its additional comments, the LLC (SIA) “VRPB” states that it has received financial support within the framework of state aid measures, but that the financial support received has not been sufficient to cover the damage caused by the measures aimed at containment of the spread of Covid-19. Although public health is a priority, the state must be aware that public funds are essentially provided by commercial activities. Therefore, when imposing restrictions on commercial activities, the state must also lay down appropriate support measures, particularly under the circumstances of crisis. As a result of the Contested Regulation, the LLC (SIA) “VRPB” has been unable to develop its commercial activities and compete with other lessors of commercial premises. Such restrictions allegedly cannot be assessed in the same way as the risks inherent to commercial activity or the circumstances of an economic crisis. The state is obliged to compensate for any damage caused as a result of the restriction on the operation of the large shopping centres.

**5 The Applicant – Limited Liability Company “EfTEN Domina”**  
(hereinafter referred to as – LLC (SIA) “Domina”) – maintains that the Contested

Regulation does not comply with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.

The LLC (SIA) “Domina” is the owner of “Domina Shopping”, a large shopping centre, and, as a part of its business activities, it rents out the premises of this shopping centre to traders and service providers. In its application, the same legal substantiation regarding non-compliance of the Contested Regulation with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution as provided by the LLC (SIA) “VRPB” in its application.

The LLC (SIA) “Domina” further indicates that the state is obliged to compensate for any losses caused by restrictions on the operation of the large shopping centres, as these restrictions are unjustified. The competitive conditions caused by these restrictions hinder market self-regulation and the possibility of making profits even in adverse conditions. These restrictions are not allegedly based on objective considerations, nor have they been subject to an analysis of their usefulness and economic consequences. The free market is one of the fundamental values of a democratic state, and the state should not interfere in the economy. The unjustified restrictions provided for in the Contested Regulation have allegedly significantly distorted competition and caused adverse impact on the operation of shopping centres even after the Contested Regulation ceased to have effect. The state is therefore responsible for the losses caused to lessees and lessors of the large shopping centres.

**6 The institution that issued the contested act, the Cabinet of Ministers,** maintains that the Contested Regulation complies with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.

The restrictions laid down in the Contested Regulation are not aimed at restricting the activities of a particular trader, but at restricting trade at certain points of sale – the large shopping centres. Thus, all the traders operating in the large shopping centres are allegedly under equal circumstances comparable by certain criteria. Whereas, in case, if it was to be considered that groups of persons being under equal circumstances comparable by certain criteria are to be determined by a certain criterion, difference in treatment would be justified on the grounds of protection of the public interests.

The Contested Regulation restricted the fundamental rights of the trader and the owner of a large shopping centre contained in the first and third sentences of Article 105 of the Constitution. This restriction of the fundamental rights has been

allegedly established by a legal norm adopted in accordance with the procedures laid down in laws and regulations. Namely, the Contested Regulation has been allegedly adopted within the framework of the authorisation granted to the Cabinet of Ministers by law, and it was adopted, declared and entered into legal effect in accordance with the procedures provided for by law. Furthermore, everyone had access to informative materials regarding the application of the restrictions provided for therein. When drafting the Contested Regulation, the Cabinet of Ministers had allegedly properly assessed the restrictions contained therein, balancing their necessity with the adverse consequences caused to the traders. The restriction of fundamental rights was allegedly aimed at protecting the public from SARS-CoV-2 virus and the disease Covid-19 caused thereby. The restriction of fundamental rights therefore has a legitimate goal – protection of the rights of others, and it is allegedly achieved by promoting epidemiological safety.

The restriction of fundamental rights contained in the Contested Regulation complies with the principle of proportionality. The Constitutional Court has allegedly recognised that a restriction related to the prevention of the spread of Covid-19 virus could be recognised as disproportionate only if it was not appropriate to achieve the legitimate goal. The Constitutional Court has allegedly also recognised that, in March 2020, the incidence of Covid-19 in Latvia was gradually increasing, and therefore the state was obliged to take prompt and efficient action to prevent further spread of the pandemic and thus protect public health. Although the contested norm 1 was adopted under different circumstances, the experience gained since the beginning of the pandemic has shown that the rapid lifting of restrictions leads to an increase in the spread of Covid-19 infection. Therefore, in a situation involving relatively high incidence rates, lifting of restrictions can be done gradually, after the effectiveness of less stringent restrictions has been ascertained. In assessing the constitutionality of the Contested Regulation, the precautionary principle is of significant importance. According to this principle, the state may take effective and proportionate measures to prevent harm from occurring where there are reasonable grounds to suspect that harm may occur.

In assessing the proportionality of the restrictions to be maintained after the lifting of the state of emergency, the Cabinet of Ministers took into account the nationwide epidemiological situation, the high risk of Covid-19 spread, and the hospital workload. A number of important considerations have suggested that a premature lifting of trade restrictions could lead to increased epidemiological

safety risks. Studies on gathering in the large shopping centres have allegedly shown that such a situation is likely. Having a separate entrance for a shop cannot guarantee that a visitor to that shop will not enter also a large shopping centre. Furthermore, it should also be taken into account that there was a relatively sharp increase in the incidence of the disease in April 2021. Consequently, the restriction of fundamental rights laid down in the Contested Regulation was applied to achieve the legitimate goal. There are no other less restrictive means to achieve this goal at the same quality, as the pandemic-related restrictions on commercial activities need to be lifted gradually in order to maintain control over the situation and to model possible scenarios of further developments.

The Cabinet of Ministers has provided a number of support measures for merchants affected by the restrictions and their employees in relation to Covid-19 pandemic, including a lockdown benefit, wage subsidies and a current assets grant support mechanism. In addition, on 8 April 2021, the Cabinet approved a new support programme for shopping centres affected by Covid-19 crisis. The state has mitigated the harm caused to merchants to the extent possible and has ensured an appropriate balance between the benefit to society and the harm caused to specific individuals. Thus, the public benefit from the restriction of fundamental rights contained in the Contested Regulation is much greater than the harm caused to persons, which the state sought to mitigate.

Trade restrictions have also been imposed in several other European countries and, in addition to other restrictions, have led to significant reduction of the spread of SARS-CoV-2. The restrictions on trade contained in the Contested Regulation are imposed specifically on the large shopping centres, as they are related to a higher risk of prolonged gathering and a higher number of possible contacts between members of different households. The contested provision 1 has been allegedly developed based on epidemiological data, including data on the spread of Covid-19 at workplaces and the likelihood that Covid-19 will spread among employees of the large shopping centres.

In assessing the proportionality of the restriction on the fundamental rights contained in the Contested Regulation, account should be taken of the fact that the imposition of complex restrictions on the trade sector at the end of 2020 affected the dynamics of visitor flows to shopping centres and thus reduced the risk of the spread of SARS-CoV-2. This goal has been allegedly achieved by limiting the gathering of people at the points of sale, including by reducing the frequency and duration of visits thereof. In the spring of 2021, Latvia was at high risk of the

spread of SARS-CoV-2, the situation was unstable, and the incidence of Covid-19 could have increased rapidly due to insufficient safety or precautionary measures. Whereas, such an increase would in turn place a significant burden on the healthcare system and threaten the continuity of healthcare services. Such a situation would have a significant negative impact on the national economy and society.

The working capital support programme available to businesses was allegedly developed taking into account the large number of potential applicants, the capacity of the state budget and the long-term impact of borrowing on the fiscal sustainability of the state budget. All the support instruments were developed in such a way as to provide support to the widest possible range of companies affected by Covid-19 crisis, in line with common principles and within the limits of the state budget.

**7 The invited person – the Saeima – maintains that the Contested Regulation complies with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.**

The main issue in the present case is whether it was permissible to suspend the operation of certain types of shops, and it primarily concerns the fundamental rights of an individual contained in Article 105 of the Constitution. Whereas, compliance of the Contested Regulation with the first sentence of Article 91 of the Constitution is to be allegedly assessed on the basis of conclusions on its compliance with Article 105 of the Constitution. Therefore, the Saeima submitted considerations on compliance of the Contested Regulation with Article 105 of the Constitution. The Contested Regulation allegedly restricted the possibilities of the LLC (SIA) “Jysk”, the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” (hereinafter referred to as – the Applicants) to perform commercial activity, and thus – their right to own property contained in Article 105 of the Constitution.

The Cabinet of Ministers has established this restriction on the fundamental rights in accordance with the authorisation granted thereto by law. The right of the Cabinet of Ministers referred to in Section 4, Paragraph One, Clauses 1<sup>1</sup> and 1<sup>2</sup> of the Law on the Management of the Spread of Covid-19 Infection to impose restrictions or prohibitions on services provided by public and private persons for the purposes of epidemiological safety, as well as requirements regarding trade and other types of economic services was established to provide the Cabinet of Ministers with a sufficiently wide freedom of action to decide on the most

appropriate solution for a particular epidemiological situation. The Cabinet of Ministers, when deciding on the imposition of restrictions and prohibitions referred to in Section 4, Paragraph One, Clause 1<sup>1</sup> of the Covid-19 Management Law, is allegedly obliged, inter alia, to assess in particular their necessity and proportionality, impact on the observance of the principle of legal equality, as well as the need to provide support measures for the persons or groups of persons affected by them. The Cabinet of Ministers has allegedly complied with this obligation when drafting the Contested Regulation, as it has allegedly assessed the information provided by the Centre for Disease Prevention and Control on the epidemiological situation and risks of spread of SARS-CoV-2 in the large shopping centres, as well as taken into account the risk of unequal competition and the experience of other countries. Furthermore, the Cabinet of Ministers has allegedly provided support measures to the traders affected by the Contested Regulation. The restriction of the fundamental rights contained in the Contested Regulation was allegedly established by a legal norm adopted in accordance with the procedures provided for in laws and regulations.

The restriction of fundamental rights allegedly has a legitimate goal – protection of the rights of others – and the Saeima agrees with the arguments of the Cabinet of Ministers on the proportionality of the restriction of fundamental rights. Similar restrictions on trade have been challenged in the constitutional courts of other EU countries and found to be compliant with their constitutions. Furthermore, the epidemiological situation in Latvia at the time when the Contested Regulation was effective and the state aid mechanisms available to merchants should also be taken into account.

**8 The invited person – the Ministry of Health – maintains that the Contested Regulation complies with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.**

In the present case, it should be assessed whether the restriction of the right to own property provided for in the first and third sentences of Article 105 of the Constitution has a legitimate goal and whether this restriction is proportionate. The restriction of the fundamental right was allegedly established by a legal norm adopted in accordance with the procedures provided for by the laws and regulations, since the Cabinet of Ministers complied with the limits of its statutory authorisation and, in accordance with Section 4, Paragraph Two of the Covid-19 Management Law, has, inter alia, assessed the circumstances set out therein, which

should be taken into account when determining the restrictions related to the spread of Covid-19. The Contested Regulation was allegedly adopted in accordance with the procedures provided for by law.

The Ministry of Health stresses that, according to the annotation to Regulation No. 191, the purpose of this regulation was to gradually introduce a safe shopping environment and to reduce the restrictions imposed on shopping centres, taking into account the increased risk of spread of SARS-CoV-2 inherent to the shopping centres, the mobility of people associated with visiting shopping centres, and the impact of trade restrictions on competition. The restriction of the fundamental rights established in the Contested Regulation has been allegedly duly assessed, being aware of its necessity and impact on specific traders. Similar trade restrictions are also in place in other European countries. Such temporary restrictions, together with other restrictions, are efficient in reducing the spread of SARS-CoV-2. The Contested Regulation is aimed at ensuring the protection of public health by restricting the gathering of people in large shopping areas – the large shopping centres, where people spend more time and where more contacts are possible between members of different households. Namely, the Contested Regulation allegedly sent a signal to the public that the large shopping centres are inaccessible for reasons of epidemiological safety, with the exception of shops selling essential goods.

The Contested Regulation is aimed at minimising the risks to epidemiological safety associated with the use of shopping centres as places of entertainment and leisure, which stimulates the gathering and mobility of people. Epidemiological safety is a prerequisite for the protection of the health of the entire society and of each individual. Functioning and economy of a country depend on the level of epidemiological safety. Health of the individual and society is a value whose importance for the well-being of society allegedly cannot be questioned. Thus, the restriction of fundamental rights contained in the Contested Regulation was imposed for a legitimate goal.

In assessing the proportionality of the restriction of the fundamental rights, the Cabinet of Ministers allegedly took into account the epidemiological situation in the country, including the risk of overloading the healthcare system in the event of a rapid spread of SARS-CoV-2, as well as the fact that there was a high risk of the virus spread in large work collectives. The Cabinet of Ministers allegedly took into account studies on gathering of people in shopping centres and the fact that, in April 2021, after the lifting of other restrictions related to Covid-19 pandemic,

there was a relatively sharp rise in the incidence indicators. The possibility of providing a separate entrance for the shop allegedly does not eliminate the possibility that its visitors will go also to other shops located in the shopping centre. Observations on the attendance of trading sites allegedly show that complex restrictions on trade at the end of 2020 had a significant impact on the flow of visitors and reduced the gathering of people at trading sites, thereby reducing the risks related to spread of Covid-19. Moreover, when assessing the proportionality of the restriction of fundamental rights, it should allegedly also be taken into account that the Cabinet of Ministers has established several support mechanisms in order to provide support to the widest possible range of merchants affected by the crisis caused by Covid-19, taking into account the state budget possibilities and based on uniform principles.

**9 The invited person – the Ministry of Economics** – maintains that the Contested Regulation complies with Article 91 and the first and third sentences of Article 105 of the Constitution.

The Ministry of Economics agrees with the arguments presented in writing by the Cabinet of Ministers and additionally points out that all the Applicants have received financial support within the framework of state aid measures established by the Cabinet of Ministers and intended for the merchants affected by Covid-19 crisis.

**10 The invited person – the Ministry of Justice** – maintains that the Contested Regulation complies with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.

The right of a person to own property, contained in Article 105 of the Constitution, inter alia, covers the right of a person to gain material benefit from a thing belonging thereto by renting it to another person for such a fee that would not only enable the maintenance of the property in question, but also bring profit to the owner of the thing. Thus, the Contested Regulation allegedly restricts the right of lessors of premises of the large shopping centres to own property contained in Article 105 of the Constitution. At the same time, the Contested Regulation restricts these fundamental rights also for those merchants which carry out their commercial activities on the premises of a large shopping centre. This restriction of fundamental rights has been allegedly established by a legal norm adopted in accordance with the procedures laid down in the regulatory enactments and has a

legitimate goal – protection of the rights of others by promoting the epidemiological safety of society.

In assessing the proportionality of the restriction of fundamental rights, it must be kept in mind that, pursuant to Section 3 of the Covid-19 Management Law, restrictions on the rights of private individuals may be imposed only when the risks to public safety that are related to the spread of Covid-19 infection cannot be effectively eliminated by applying the legal means specified under the general legal procedures, and those restrictions should be lifted if there is no objective need to maintain them. The contested norm 1 was introduced into the legal system by Regulation No. 191. From the information on the current epidemiological situation given in the annotation to the Regulation, it appears that the likelihood of an increase in the incidence of disease depended on the effectiveness of the safety measures. Furthermore, the number of hospitalised Covid-19 patients was quite high and the downward trends were very slow. Therefore, allegedly it was not permissible to promote rapid mobility and gatherings of people. Given the high risk of the spread of SARS-CoV-2 within work teams, it was allegedly necessary to reduce gathering of large work team, including in the large shopping centres. The Contested Regulation has reduced the mobility of people and gathering in the large shopping centres and, consequently, the risk of spreading SARS-CoV-2 coronavirus. Restriction of fundamental rights is therefore appropriate to achieve its legitimate goal.

It is allegedly doubtful that the legitimate goal of restriction of the fundamental rights could have been achieved by means less restricting person's rights, since the possibility to enter the shop through a separate entrance does not mean that the shop visitors will not enter the remaining area of the shopping centre and the common-use areas. The Cabinet of Ministers later adopted a regulation that allowed operation of the merchants whose place of business was provided with a separate external access in the large shopping centres. By this regulation, the Cabinet of Ministers has allegedly continued gradual transition towards a safe shopping environment.

Several state aid programmes have been made available to the merchants affected by Covid-19 crisis, and these programmes were developed to prevent the adverse effects caused by the restrictions related to the spread of Covid-19 infection. It should be allegedly kept in mind that spread of Covid-19 infection threatens not only the health of individuals and the public, but also the economy. Thus, the benefit to society from the restriction of fundamental rights contained in

the Contested Regulation allegedly manifests not only as protection of epidemiological safety and public health, but also protection of the economy.

With regard to compliance of the Contested Regulation with the first sentence of Article 91 of the Constitution, the Ministry of Justice is of the opinion that the merchants who manage large shopping centres and rent out their premises are in equal and comparable conditions with the merchants which perform their commercial activities on these premises. The Contested Regulation provided for differential treatment of groups of persons in different circumstances, as it allegedly did not apply to the merchants which performed their activities outside large shopping centres. This treatment has been allegedly established by a legal norm adopted in accordance with the procedures laid down in laws and regulations and has a legitimate goal – protection of the rights of others. The Ministry of Justice agrees with the arguments of the Cabinet of Ministers on the proportionality of this differential treatment.

**11 The invited person – the Centre for Disease Prevention and Control** – points out that, according to scientific studies, indoor spread of the coronavirus SARS-CoV-2 depends not only on the area of the premises, but also on a combination of other conditions, such as the quality of ventilation or air venting, the number of visitors, duration of stay, distance between visitors, intensity of breathing and use of masks.

Coronavirus SARS-CoV-2 is a respiratory virus that is spread by airborne droplets and aerosols, so the key to limiting the spread of this virus is adequate indoor air exchange – ventilation or air venting. The restrictions, which have been established depending on the area of shopping centre and the types of goods sold in the shops, are not sufficiently effective. The restrictions provided for in the Contested Regulation were allegedly adopted with the goal to reduce gathering of people and limit the time spent by people shopping at the trading sites.

The Centre for Disease Prevention and Control cannot draw conclusions directly on the effectiveness of trade restrictions, as the intensity of the spread of Covid-19 infection allegedly depends on compliance with the restrictive measures, mutations of the virus and other factors. Since the beginning of the pandemic, all European countries have allegedly imposed full or partial with regard to trade less essential goods in their effort to reduce the spread of Covid-19.

**12** The **invited party** – the **Competition Council** – points out that restrictions with regard to the permissible number of visitors at a point of sale of certain area must be carefully considered and non-discriminatory towards the market participants, regardless of whether the point of sale is located in a shopping centre or separately, as well as of the category of goods traded, area of the shopping centre and other circumstances, in order to allow those merchants which are able to ensure compliance with the requirements for epidemiologically safe trade to continue their activity.

The restrictions contained in the Contested Regulation have also created unequal conditions of competition in the rental market, namely, between the merchants which rented out premises in the large shopping centres and the lessors of other commercial premises. The contested norm 3 was supplemented by Sub-paragraph 10, which provided for that, in large shopping centres, traders whose commercial premises could be provided with separate external access could operate. This has allegedly eliminated non-level playing field for such merchants as the LLC (SIA) “Jysk”. However, non-level playing field have allegedly remained for other merchants which performed their commercial activity in the large shopping centres and which were unable to ensure separate external access to their place of business. The Competition Council has invited the Cabinet of Ministers to clarify these restrictions in the light of the above considerations.

The Competition Council has not thoroughly investigated the impact of the restrictions on the operation of the large shopping centres stipulated in the Contested Regulation on the market and merchants during the period of validity of this regulation, and it has no statistical data on the impact of these restrictions. The Competition Council would have reason to conduct such a research spanning a significant period of time in the event that there is a prima facie case of an adverse impact on competition on the market, such as a significant reduction in the number of competitors. Estimates of the losses suffered by market participants as a result of the restrictions in question are allegedly not sufficient to assess impact of those restrictions on competition. The Competition Council also has not investigated the effectiveness of the state aid mechanisms provided to the merchants affected by Covid-19 crisis.

The Competition Council has publicly expressed its opinion on the impact of trade restrictions on competition in several letters addressed to merchants, the Cabinet of Ministers and certain ministries – Ministry of Economics and Ministry of Finance – inter alia, referring to the publication of the Organisation for

Economic Cooperation and Development on the adverse impact of Covid-19 pandemic on merchants.

**13 The invited person – the Ombudsman** – maintains that the Contested Regulation does not comply with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution.

The Contested Regulation has reduced the income of the merchants subjected to the restrictions on trade provided for therein. Thus, the Contested Regulation restricts the right to own property contained in the first and third sentences of Article 105 of the Constitution. Moreover, the Contested Regulation allegedly creates a difference in treatment between the merchants performing commercial activities in the large shopping centres and the merchants renting premises on the large shopping centres. These merchants are allegedly in a comparable situation to the merchants performing the same commercial activities at other places and were able to earn a normal income, since the merchants in both groups were able to ensure compliance with the epidemiological requirements. The arguments of the Applicants as to which groups of persons are in the same and comparable conditions according to certain criteria are allegedly well-founded.

Taking into account the actual circumstances at the time of adoption and validity period of the Contested Regulation, considerations of the Applicants as to whether the restriction of fundamental rights was established by a legal norm adopted in accordance with the procedures established by laws and regulations are not per se sufficient to declare the Contested Regulation as unconstitutional. In the present case, it is necessary to assess whether the restriction of fundamental rights contained in the Contested Regulation is proportionate.

The restriction on the right to own property and the differential treatment contained in the Contested Regulation have been allegedly established for several purposes: first, to restrict people's mobility and, second, to limit the pressure on public transport. Those goals can be allegedly regarded as legitimate. When assessing compliance of the Contested Regulation with both the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution, it is necessary to consider, first of all, the proportionality of the trade restrictions contained in the Contested Regulation.

Those restrictions on trade were allegedly appropriate to achieve their legitimate goals, but they were not necessary. The Cabinet of Ministers has indicated that the Contested Regulation has been elaborated taking into account

the general nationwide epidemiological situation, studies on the gathering of people in the large shopping centres and observations on people's habits in relation to visiting large shopping centres. Such considerations are allegedly too general. This risk-based rationale could be justified at the beginning of a pandemic. At the time of adoption of the contested norm and at the time of its validity, the country had not declared emergency situation, it had accumulated certain experience in combating pandemics, and scientific studies were available.

The Applicants had allegedly indicated on studies regarding the impact of air quality on the spread of Covid-19 infection. Several circumstances allegedly show that the Cabinet of Ministers was aware of these studies and of data on air quality at many Latvian trading sites, but these studies and data allegedly were not reflected in the Cabinet of Ministers' justification of the necessity of the Contested Regulation. The Cabinet of Ministers has also allegedly failed to properly assess the effectiveness of other epidemiological safety measures already established in the area of trading, as well as the data on the change in people's habits with regard to visiting shopping centres. A legal framework that would allow the traders whose points of sale can be provided with a separate external access to operate, under other epidemiological safety measures would strike a balance between the interests of traders and the public. The Cabinet of Ministers could also have allegedly, for example, set stricter epidemiological safety requirements for visiting trading sites or for air quality at such places.

There are grounds to believe that the Contested Regulation did not reduce the risks of spread of Covid-19, since it is possible that people went to other places of sale, including by public transport. It should be taken into account that shops located outside the shopping centre, which were located in a single area larger than 7000 m<sup>2</sup> and with a separate entrance, could continue their operation. Similarly, the operation of large shops, such as building material shops, allegedly was not restricted. Thus, there is no public benefit in sight from the restrictions on trade provided for in the Contested Regulation. Whereas, the state aid measures established by the Cabinet of Ministers are allegedly insufficient to justify the restriction of an individual's rights.

**14 Invited person – Professor of the Riga Stradiņš University, Faculty of Public Health and Social Welfare, Department of Public Health and Epidemiology, Dr. med. Ģirts Briģis** – points out that shopping centres are public places – enclosed spaces where a relatively large number of people usually gather.

SARS-CoV-2 coronavirus, which causes Covid-19 disease, allegedly spreads from person to person mainly through airborne droplets and aerosols. Infection is also possible after contact with a dirty surface, if a person brings the virus with hands from the surface near the nose, mouth or eyes. Infection with SARS-CoV-2 is allegedly more likely in the shopping centres with relatively high visitor density. This likelihood increases when new, more contagious variants of the virus emerge. Therefore, apart from vaccination, the main mean allowing to limit spread of the virus is to reduce the possibility of human contacts.

In shopping centres, transmission of the virus is possible not only in sales areas but also in common-use areas, which can be particularly busy. Furthermore, nowadays shopping centres have become places not only for shopping, but also for spending free time, since, for example, cinemas and restaurants may be operated there. It should also be taken into account that going to shopping centres increases the use of public transport and thus creates additional opportunities for contacts. The fact that gathering of people in shopping centres have an impact on the level of incidence is allegedly confirmed not only by experience in other countries, but also in Latvia at the end of 2020. In light of the above, all the shopping centres are allegedly to be deemed objects of increased risk of infection. Therefore, in the circumstances of high incidence, which also existed at the time when the Contested Regulation was drafted, the restriction of the operations of shopping centres and the gathering of people was allegedly scientifically justified and in compliance with the public health interests.

During the period of validity of the Contested Regulation, other requirements aimed at restricting the gathering of people were also established. These requirements allegedly cannot be regarded as alternatives to the restrictions provided for in the Contested Regulation. The effectiveness of all restrictive measures allegedly must be assessed in the aggregate. The restrictions are allegedly set in accordance with the principle that it is necessary to minimise any human contacts, and thus also the possibility of transmission of the virus, while measures necessary for human existence and the functioning of society may be allegedly determined as the exceptions to these restrictions. Minimum of these required measures and extension thereof form a political decision taken as a result of compromises, which takes into account not only epidemiological and public health considerations, but also other aspects.

Restrictions on the maximum occupancy rate of commercial premises were allegedly set for all points of sale. In this respect, suspension of the operation of

shopping centres and restriction of the occupancy of premises are allegedly to be considered efficient measures to limit spread of the virus. Restrictions on the trade of certain categories of goods are not allegedly aimed at direct limiting of spread of the virus, since that does not allegedly depend on the nature of the goods in question. The purpose of such restrictions is allegedly to limit the flow of visitors as much as possible, allowing only essential goods to be sold. The list of such goods contained in the Contested Regulation allegedly is not based on scientific research or generally accepted criteria.

Spread of the virus could be limited in more efficient way by setting stricter restrictions, i.e., by narrowing the range of essentials and therefore the shops available, by allowing only outdoor sales, by setting even lower occupancy limits, and by significantly tightening enforcement of the restrictions. Restrictions of a different nature cannot serve as an alternative to the restrictions provided for in the Contested Regulation, but may complement them. The restrictions laid down in the Contested Regulation are allegedly proportionate to the interests of public health.

**15 Invited person – Head of the Infection Surveillance Service of Pauls Stradins Clinical University Hospital, infectologist, *Dr. med.* Uga Dumpis** – points out that it is difficult to identify scientific criteria which the restrictions such as those provided for in the Contested Regulation could be based on, and that there are always possible better solutions.

Vaccination and non-pharmaceutical measures are the most effective means to fight a pandemic. Non-pharmaceutical measures aim to restrict people's mobility and mutual contacts. Their effectiveness is usually measured as a percentage. The choice on which non-pharmaceutical measures to establish is a political one, with some countries banning leaving home, and others – closing shops.

The European Centre for Disease Prevention and Control has allegedly a modeller-developed calculator to predict the effectiveness of non-pharmaceutical measures in a given country. According to the calculations made in this calculator for Latvia, an effectiveness of 8% was allegedly predicted for the closure of shops that do not sell essential goods. It should also be taken into account that going to the shops involves being on public transport and other types of gathering. Therefore, going to the shops should be made as unattractive as possible, so that people only go shopping when they absolutely have to. This is precisely the purpose of the restrictions laid down in the Contested Regulation.

**16 Invited person – Associate Professor, Department of Law, Faculty of Law, Riga Stradiņš University, Dr. iur. Karina Palkova** – maintains that the Contested Regulation is essentially aimed at fulfilling the state's obligation to protect public health and safety.

Historically, states have had broad powers to impose restrictions on commercial activities in order to protect public health. Such restrictions are also restrictions of a person's right to own property, and they are permissible as long as they are justified by the public interest and comply with the principle of legal equality. The Contested Regulation was allegedly aimed at restricting commercial activity at certain places – the large shopping centres – and its purpose was not to restrict specifically the Applicants' commercial activities. It follows from the annotation to Regulation No. 191 that the Contested Regulation is aimed at protecting public health and, in the process of its development, information on the prevalence of SARS-CoV-2 and the incidence of Covid-19 has been taken into account, a risk analysis has been carried out, forecasts have been made, and the need to reduce gathering of people in large work groups, which is characteristic specifically to the large shopping centres has been identified. Replies of the Cabinet of Ministers and the Minutes No. 30 of the Cabinet of Ministers meeting of 26 March 2021 allegedly show that the Cabinet of Ministers, when drafting the contested norm 1, took into account the epidemiological data on SARS-CoV-2 infection, opinions of experts and scientists, as well as other information provided by the Centre for Disease Prevention and Control. However, it is not possible to acquire assurance from the annotation of Regulation No. 191 whether the Cabinet of Ministers assessed the possibility of achieving the goals of the Regulation without restricting the activities of shopping centres and whether it assessed the balance between the rule of law and the principle of legitimate expectations.

Article 111 of the Constitution lays down the state's duty to protect human health. Thus, public health is allegedly one of the constitutional values contained in the Constitution, for the protection of which the state may restrict the fundamental rights of individuals, in compliance with the principle of proportionality. The permissibility of such restrictions is also allegedly based on the International Health Regulations and the recommendations of the World Health Organisation issued on the basis of these Regulations. Although the recommendations of the World Health Organisation are not mentioned in the annotation to Regulation No. 191, it is allegedly clear from the considerations set

out therein that these provisions are in substance consistent with the recommendations of the World Health Organisation in the field of public health. If the epidemiological situation indicates a high risk of spread of the virus, such restrictions are allegedly justified.

The Council of State of the Kingdom of Belgium has found various restrictions on trade to be lawful in the light of rising incidence rates and pressure on hospital. Constitutionality of the restrictions laid down in the Contested Regulation must also be assessed in a similar manner. It follows from the rulings of the Council of State of the Kingdom of Belgium that the right to health and life of an individual must be actively protected and that the state must avoid crisis in the healthcare system. Such obligations of the state are also contained in Articles 111 and 116 of the Constitution. From the viewpoint of international health law, in deciding how severely to restrict the rights of individuals in order to protect public health, priority must be allegedly given to the need to ensure that protection as soon as possible. The Constitutional Court of the Republic of Croatia has allegedly declared the restrictions on commercial activities imposed by the Croatian Civil Protection Service unconstitutional on the grounds that the Service had not properly assessed the possibility to use less restrictive means of person's rights. These considerations cannot be applied to the present case, since the Cabinet of Ministers has assessed the necessity of the restrictions provided for in the Contested Regulation.

**17** The **invited party** – the association “**Latvian Chamber of Commerce and Industry**” (hereinafter referred to as – the association), points out that the legal framework, which lays down the conditions of trade, applies equally to traders carrying out commercial activities in the large shopping centres and to traders carrying out commercial activities at other trading sites. Therefore, lessors of the large shopping centre premises and lessors of other shopping centre premises are allegedly under equal circumstances comparable by certain criteria. The merchants subject to the exemptions stipulated in the Contested Regulation apply and other merchants carrying out the same type of commercial activities outside the large shopping centres are also under equal circumstances comparable by certain criteria.

The Association has allegedly repeatedly expressed its opinion on specific epidemiological safety measures in the trade and has always advocated a legal framework that would allow operation of as many merchants as possible and would

not restrict the activities of certain categories of shops and distort competition. The Association has drawn the attention of several officials to the fact that, at the time when the requirement to provide at least 25 m<sup>2</sup> of sales area per visitor was in force, excessive queues formed outside small shops with the area of up to 1,000 m<sup>2</sup>. These observations suggest that restrictions on certain points of sale divert shoppers to other, open points of sale. This consideration allegedly applies also to the restrictions imposed by the Contested Regulation on the large shopping centres, which have resulted in a shift of shoppers to smaller points of sale.

Information published by the Central Statistical Bureau shows that the impact of the Contested Regulation on the trade sector is long-lasting and has continued even after the Contested Regulation expired. The Contested Regulation has created unequal conditions among traders and has significantly affected their commercial activities depending on the location of their point of sale. According to information published by the Bank of Latvia, the trade sector has a high number of recipients of lockdown benefits and wage subsidies. Whereas, a member of the Association – association “Alliance of Real Estate Developers” [“Nekustamo īpašumu attīstītāju alianse”] – points out that the measures imposed to limit spread of SARS-CoV-2 had a significant negative impact on lessees of shopping centre premises which were unable to pay their rent and therefore asked for rent reductions or ceased their economic activities. As a result, lessors of the large shopping centres have also suffered significant losses. Whereas, the State aid measures allegedly were not efficient, as they only partially compensated the losses.

The Association points out that it is not in favour of imposing restrictions on certain sectors of the economy, as such measures would not only fail to significantly limit the spread of the SARS-CoV-2 coronavirus, but would also be cause damage to merchants. Epidemiological safety measures should aim to create an epidemiologically safe environment.

### **The Concluding Part**

**18** By decision of the President of the Constitutional Court Sanita Osipova of 2 November 2021, Case No. 2021-24-03 was referred for adjudication. At the assignments hearing on 10 November 2021, the Constitutional Court decided, *inter alia*, to adjudicate the case in a written procedure. Notification on the hearing of

the case in written procedure was sent to the Applicants by electronic mail on 15 November 2021 (*see Volume 4 of the case file, file page 147 and Volume 5, Page 41*).

In accordance with Section 28<sup>1</sup>, Paragraph Two of the Constitutional Court Law, within fifteen days after the receipt of the notification on the adjudication of a case in written procedure, the parties to the case have the right to familiarise themselves with the case file and to express their opinions on them in writing. According to the fifth sentence of Section 9, Paragraph Two of the Law On Notification, the notification shall be deemed notified on the second working day after sending thereof. Thus, in the given case, it is to be considered that the LLC (SIA) “Domina” received the notification on the adjudication of the case in written procedure on 17 November 2021 and was entitled to exercise the right provided for in Section 28<sup>1</sup>, Paragraph Two of the Constitutional Court Law until 2 December 2021.

The LLC (SIA) “Domina” filed its written opinion on the materials of the present case to the Constitutional Court on 28 January 2022 (reg. No. 91), namely, after the expiry of the referred to period. Procedural documents filed after the expiry of the procedural time-limit shall not be accepted by the court. Consequently, the written opinion of LLC (SIA) “Domina” should not be appended to the case-file.

**19** The Contested Regulation expired on 2 June 2021. Pursuant to Section 29, Paragraph One, Clause 2 of the Constitutional Court Law, court proceedings of a case may be terminated until proclamation of the judgement by the decision of the Constitutional Court, if the contested legal norm or act has been revoked. However, the law provides the Constitutional Court with the option to terminate the proceedings, but it does not impose an obligation to do so. The Constitutional Court must establish whether there are such circumstances which, nevertheless, require that the proceedings be continued (*see Paragraph 8 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*).

The present case contains several merged cases, previously initiated based on constitutional complaints. A person lodges a constitutional complaint in order to defend his/her fundamental rights contained in the Constitution. Therefore, when considering the issue of termination of legal proceedings in a case initiated based on a constitutional complaint, the Constitutional Court should, inter alia, take into account the need to protect the fundamental rights established in the

Constitution (*see Paragraph 4 of the Judgement of the Constitutional Court of 12 February 2008 in Case No. 2007-15-01*). The need to continue the proceedings in the case may be indicated by the fact that the applicant has requested that the contested norm be declared null and void from a certain point in the past. Judgement of the Constitutional Court may be the only legal way in which the applicant may continue the protection of his/her infringed rights (*see Paragraph 7 of the Decision of the Constitutional Court of 18 April 2016 on termination of proceedings in Case No. 2015-15-01*).

The Applicants requested the Constitutional Court to declare the Contested Regulation null and void as of the moment of infringement of their fundamental rights, i.e., from 7 April 2021, when the contested norm 1 entered into effect. Accordingly, continuation of the proceedings in the case is necessary to ensure that the protection of the fundamental rights of the Applicants adjudicating the case on the merits.

The Constitutional Court has previously recognised that its rulings are of fundamental importance for ensuring the principle of the rule of law and, therefore, it is obliged to provide its assessment on a constitutionally significant issue even if the contested norm has expired (*see, for example, Paragraph 10.2 of the Decision of the Constitutional Court of 3 April 2014 on termination of proceedings in Case No. 2013-11-01*). Thus, the importance of the underlying issue for society may also be a factor in the need to proceed with the court proceedings in the case.

The present case concerns a challenge to legal framework adopted in the context of Covid-19 pandemic to limit spread of Covid-19 infection. The national measures to control the spread of Covid-19 infection have a significant impact on a wide range of persons. Taking into account the fact that, at the time of adjudication of the present case, Covid-19 pandemic is still ongoing, the Constitutional Court recognises that the matter of constitutionality of the legal framework aimed at limiting the spread of Covid-19 infection is a matter of public importance on which the Constitutional Court needs to give its assessment.

**Accordingly, the proceedings in the present case should continue.**

**20** In the present case, compliance of several wordings of Paragraph 24<sup>18</sup> of the Regulation No. 360 – the Contested Regulation – with several norms of the Constitution has been contested. Therefore, the Constitutional Court must first of all determine the most efficient approach to assessing the constitutionality of the Contested Regulation.

**20.1** The Contested Regulation imposed restrictions on the operation of shops in a large shopping centre. Three different wordings of the Contested Regulation have been effective at different times: the contested norm 1, the contested norm 2 and the contested norm 3. In all these wordings, the Contested Regulation prohibited the operation of all shops in the large shopping centre, except for those shops which were subject to the exceptions provided for in the Contested Regulation.

The LLC (SIA) “Jysk” is a commercial company operating in the field of retail trade of furniture, lighting equipment and other household accessories in specialised shops. It is apparent from its application and the documents attached thereto that most of its shops are located on the premises of the large shopping centres and that these shops may be provided with separate external access. The application of LLC (SIA) “Jysk” states that, according to the contested norm 1 and the contested norm 2, the shops located in the large shopping centres, which can be separated from other premises of the shopping centre and which may be provided with a separate external access, were not entitled to operate. In the opinion of LLC (SIA) “Jysk”, such a regulation unjustifiably restricts the right of a trader, whose shop is located on the premises of a large shopping centre and can be provided with a separate external access, and whose shop is not subject to the exceptions stipulated in contested norm 1 and contested norm 2 (hereinafter referred to as – the infringed trader), to own property contained in the first and third sentences of Article 105 of the Constitution and violates the principle of legal equality contained in the first sentence of Article 91 of the Constitution.

Whereas, the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” are owners of the large shopping centres, which, as a part of their commercial activities, rent out the premises of their large shopping centres to traders and service providers. These companies object to the fact that, under the Contested Regulation, only individual shops could operate in a large shopping centre. Applications of these commercial companies state that, as a result of the Contested Regulation, traders who had already concluded a contract for the lease of the premises of the large shopping centre had difficulties paying the rent, while other traders lost interest in leasing the vacant premises of the large shopping centre. In the opinion of the LLC (SIA) “VRPB” and the LLC (SIA) “Domina”, the Contested Regulation unjustifiably restricts the right to own property contained in the first and third sentences of Article 105 of the Constitution, as well as violates the principle of legal equality contained in the first sentence of Article 91 of the Constitution.

Thus, the application of the LLC (SIA) “Jysk” provides arguments on the restriction of fundamental rights of the infringed trader resulting from the contested norm 1 and the contested norm 2. The applications of the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” provide arguments on restriction of the fundamental rights of the owner of a large shopping centre, which resulted from the Contested Regulation as a whole. The considerations indicated by the Applicants in their applications as to whether a restriction of fundamental rights has been established by a legal norm adopted in accordance with the procedures laid down in laws and regulations applies specifically to Regulation No. 191, by which the contested norm 1 was adopted. Other arguments of the Applicants on non-compliance of the Contested Regulation with the first and third sentences of Article 105 of the Constitution, as well as with the principle of legal equality contained in the first sentence of Article 91 of the Constitution are similar. Furthermore, the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” point to the close link between the impact of the Contested Regulation on traders whose shops are located on the premises of a large shopping centre and owners of the large shopping centres.

Taking into account the actual circumstances of the case, the arguments provided by the Applicants and the need to ensure an efficient, comprehensive and objective assessment of the constitutionality of the Contested Regulation, in the present case, the Constitutional Court will simultaneously assess the constitutionality of the entire Contested Regulation by verifying its compliance with the Constitution both with respect to the infringed trader, and the owner of the large shopping centre, separately indicating those aspects of the assessment which apply only to a specific wording or subject of the Contested Regulation.

**20.2** The applicants requested the Constitutional Court to declare the Contested Regulation non-compliant with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution. If compliance of a legal norm with several norms of the Constitution is contested, then the Constitutional Court, taking into account the substance of the case under adjudication, must determine the most efficient approach to assessing that compliance (*see, for example, Paragraph 23 of the Judgement of the Constitutional Court of 26 April 2018 in Case No. 2017-18-01*).

It follows from the case file that the main issue in the case is the constitutionality of the restriction of the fundamental rights contained in the first and third sentences of Article 105 of the Constitution imposed on the infringed

trader and the owner of the large shopping centre. However, having verified compliance of the Contested Regulation with the first and third sentences of Article 105 of the Constitution, the Constitutional Court will assess compliance of this regulation with the principle of legal equality included in the first sentence of Article 91 of the Constitution.

**Consequently, the Constitutional Court will first of all assess compliance of the Contested Regulation with the first and third sentences of Article 105 of the Constitution, and then – with the first sentence of Article 91 of the Constitution.**

21 Article 105 of the Constitution provides for a comprehensive guarantee of rights of property nature. The first three sentences of Article 105 of the Constitution cover a person's property rights as all the rights of a property nature which a person may use for his/her own benefit without hindrance and which he/she may dispose of at his own will, as well as establish the social obligation of the owner towards society – not to use property contrary to the interests of society – and provide for that property rights may be restricted (*see Paragraph 16 of the Judgement of the Constitutional Court of 7 October 2021 in Case No. 2020-59-01*). The first sentence of Article 105 of the Constitution protects a person lawfully acquired property, however, the second and third sentences allow the state to restrict property rights by law in the public interest (*see, for example, Paragraph 12.3 of the Judgement of the Constitutional Court of 8 April 2015 in Case No. 2014-34-01*).

The Constitutional Court has recognised that state interference in the performance of commercial activity is also to be regarded as a restriction of the right to own property (*see Paragraph 10.2 of the Judgement of the Constitutional Court of 12 December 2014 in Case No. 2013-21-03*). In order to establish whether the contested legal framework interferes with the performance of commercial activity and thus restricts the right of individuals to own property, it must be established whether it affects the commercial activity of the persons concerned (*cf. Paragraph 17.2 of the Judgement of the Constitutional Court of 12 February 2020 in Case No. 2019-05-01*).

The Contested Regulation prohibited the operation of all shops in a large shopping centre that did not fall within its exceptions. Such a prohibition prevented the traders concerned from generating income, leaving them without any income at all (in the case of a trader operating only in shops located in the large shopping

centres) or in a certain part (in the case where the trader also has shops at other trading sites or is able to operate trade by means of distance communication). Under the contested norm 1 and the contested norm 2, the infringed trader was not able to conduct trade in its shop arranged on the premises of a large shopping centre. Thus, the contested norm 1 and the contested norm 2 affected the commercial activities of the infringed trader and restricted its right to property.

The Constitutional Court has recognised that the right to own property established in the first sentence of Article 105 of the Constitution includes the right of the owner to use the property owned by him/her in such a way as to obtain the greatest possible economic benefit (*see, for example, Paragraph 12.2 of the Judgement of the Constitutional Court of 8 December 2015 in Case No. 2015-07-03*). The right to own property includes, inter alia, the right to rent out one's own property and thereby gain benefit from it. If the owner cannot freely use his/her property, including renting it out, deriving possible benefits from it, his/her right to own property is restricted (*cf. Paragraph 10 of the Judgement of the Constitutional Court of 8 March 2006 in Case No. 2005-16-01 and Paragraph 18.2 of the Judgement of the Constitutional Court of 12 April 2018 in Case No. 2017-17-01*).

The Contested Regulation does not directly prohibit the owner of a large shopping centre from renting out the premises of the shopping centre and benefiting therefrom. The prohibition targeted specific trading sites – the large shopping centres. However, ability of the owner of a large shopping centre to benefit from the lease of the premises of a large shopping centre is closely linked to the rights of the lessees to use these premises for trade. According to the Contested Regulation, only certain shops, which were subject to the exceptions laid down in the Contested Regulation, were allowed to operate in a large shopping centre. It is reasonable to assume that, as a result of the Contested Regulation, traders had no interest in renting premises in a large shopping centre if the Contested Regulation would subsequently prevent them from trading there. Consequently, the Contested Regulation in essence prevented the owner of a large shopping centre from exercising its right to lease the premises of a large shopping centre and to benefit from it. Thus, the Contested Regulation also results in a restriction of the right of the owner of a large shopping centre to own property.

**Consequently, the Contested Regulation restricted the fundamental rights of both the infringed trader and the owner of a large shopping centre,**

**which are contained in the first and third sentences of Article 105 of the Constitution.**

**22** In ascertaining whether a restriction on a person's right to own property is justified, the Constitutional Court must assess whether:

- 1) the restriction of fundamental rights has been established by a legal norm adopted in accordance with the procedures laid down in laws and regulations;
- 2) the restriction of fundamental rights has a legitimate goal;
- 3) the restriction of fundamental rights is proportionate to the legitimate goal (*cf. Paragraph 12 of the Judgement of the Constitutional Court of 11 December 2020 in Case No 2020-26-0106*).

The Contested Regulation results in restrictions of fundamental rights of two different subjects. Firstly, the Contested Regulation results in a restriction of the infringed trader's right to own property. Restriction of the fundamental rights of this subject is manifested in the form of an interference with its commercial activity resulting from the contested norm 1 and the contested norm 2, in so far as those norms prohibit from trading in a shop arranged on the premises of a large shopping centre which is not subject to the exceptions laid down in those norms, but which may be provided with a separate external access. Secondly, the Contested Regulation results in a restriction of the right of the owner of a large shopping centre to own property. Restriction of the fundamental rights of this subject manifests in the form of an interference with the exercise of his/her right to lease the premises of a large shopping centre and to benefit therefrom. This restriction of fundamental rights results from the general prohibition on the operation of shops located in large shopping centres provided for in the Contested Regulation, to which there are only a few exceptions.

Taking into account the different manifestation of the restrictions of fundamental rights of the aforementioned subjects, the Constitutional Court will separately assess whether, firstly, the restriction of the fundamental rights of the infringed trader resulting from the contested norm 1 and the contested norm 2 and, secondly, the restriction on the fundamental rights of the owner of a large shopping centre resulting from the entire Contested Regulation comply with the first and third sentences of Article 105 of the Constitution.

**Consequently, the Constitutional Court will first of all assess the constitutionality of the restriction on the trader's right to own property resulting from the contested norm 1 and the contested norm 2.**

**23** In order to assess whether a restriction of fundamental rights has been established by a legal norm adopted in accordance with the procedures established by laws and regulations, the Constitutional Court must examine the following:

1) whether the Contested Regulation has been issued on the basis of the law and in accordance with the procedures provided for in laws and regulations;

2) whether the Contested Regulation has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;

3) whether the Contested Regulation has been formulated in sufficiently clear manner for a person to be able to understand the content of the rights and obligations arising therefrom and to predict the consequences of application thereof (*see Paragraph 14 of the Judgement of the Constitutional Court of 24 October 2019 in Case No 2018-23-03*).

The restriction of fundamental rights must be established in such an issuance process of regulatory legal enactment, which complies with the principle of good lawmaking (*see, for example, Paragraph 15 of the Judgement of the Constitutional Court of 6 April 2021 in Case No 2020-31-01*).

**24** The contested norm 1 was adopted by Regulation No. 191, the draft of which TA-790 was approved by the Cabinet of Ministers at its meeting on 1 April 2021. Regulation No. 191 was published in the Official Gazette "Latvijas Vēstnesis" on 1 April 2021 (official publication No. 2021/64B.1). Whereas, the contested norm 2 was adopted by Regulation No. 208, which incorporated norms from the draft Cabinet Regulations TA-813, TA-819 and TA-828, which were approved at the Cabinet meeting on 8 April 2021. Regulation No. 208 was published in the Official Gazette "Latvijas Vēstnesis" on 9 April 2021 (official publication No. 2021/68B.1).

Regulation 191 and Regulation 208 state that they are issued on the basis of several legal norms of the Epidemiological Safety Law and the Covid-19 Management Law. The relevant norms of the Epidemiological Safety Law provide for, inter alia, the right of the Cabinet of Ministers to determine epidemiological safety measures to limit the spread of certain infectious diseases. Whereas, the relevant provisions of the Covid-19 Management Law provide for the right of the Cabinet of Ministers to provide for conditions and restrictions in specific fields to limit specifically the spread of Covid-19 infection.

The parties to the case have not raised any objections in relation to the fact that the Cabinet of Ministers, by issuing the contested norm 1 or contested norm 2, has violated its statutory authority, as well as that these norms are not accessible or sufficiently clear and predictable. The Constitutional Court has no doubt that the contested norm 1 and contested norm 2 have been issued within the framework of the authority stated for the Cabinet of Ministers by the law, are available in accordance with the requirements of laws and regulations, as well as sufficiently clear to allow a person to understand the content of the rights and obligations arising therefrom and to foresee the consequences of the application thereof.

**24.1** SIA "Jysk" maintains that the restriction of the fundamental right included in the contested norm 1 and the contested norm 2 has not been established by a legal norm adopted in accordance with the procedure provided for in normative enactments, since the Cabinet of Ministers has not observed the principle of good law-making in the process of elaboration of the contested norm 1. According to Jysk, the Cabinet of Ministers was obliged to thoroughly study the impact of the restrictions on the operation of large shopping centre stores contained in the Contested Regulation, inter alia, by consulting interested parties, as this regulation was drafted to regulate trade after the end of the emergency situation. The Cabinet of Ministers has not properly assessed the necessity of restrictions on the operation of the large shopping centre and the impact of these restrictions on traders, as well as has not assessed the possibility of establishing a different, less restrictive regulation. On the contrary, the Cabinet of Ministers points out that in the process of drafting the Contested Regulation, the interests of traders and the public have been duly balanced, taking into account the information on the epidemiological situation in the country and the risk of the spread of Covid-19 among employees of a large shopping centre.

The principle of good law-making applies to the process of preparation and adoption of any regulatory enactment, including also to the process of adoption of regulatory enactments of the Cabinet of Ministers (*see Paragraph 24 of the Judgement of the Constitutional Court of 19 June 2020 in Case No. 2019-20-03*). In accordance with the principle of good law-making, the Cabinet of Ministers must, inter alia, assess the compliance of the legal norms provided for in the draft law with legal norms of higher legal effect, including the Constitution, international and European Union legal norms, and harmonise the legal norms included in the draft law with those already existing in the legal system in accordance with the principle of rational legislator. Also, the provided for legal

framework, if necessary, must be duly justified by explanatory studies (*cf. Paragraph 16 of the Judgement of the Constitutional Court of 7 January 2022 in Case No. 2021-06-01*). The Cabinet of Ministers must ensure that, during the process of drafting of legal framework, opinions of all interested parties are sought to the maximum extent possible and that objections to the drafted legal framework are heard directly or indirectly. The hearing of interested persons may also be ensured by hearing representatives of the relevant groups of persons (*cf. Paragraph 17 of the Judgement of the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*).

However, the Constitutional Court has recognised that only substantial breaches of procedure may serve as grounds to recognise that the adopted act does not have legal force (*see Paragraph 16 of the Judgement of the Constitutional Court of 7 January 2022 in Case No. 2021-06-01*). At the same time, the principle of good law-making does not guarantee a specific result desirable for a certain person or a group of persons, however, adherence to such a principle provides everyone with assurance that the relevant issue has been discussed democratically, namely, various opinions have been expressed and analysed, and the best possible balance between various conflicting rights and interests has been sought, complying with the values contained in the Constitution and general principles of law (*see Paragraph 24.1 of the Judgement of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01*).

Good law-making also means that the Cabinet of Ministers can effectively decide, within the limits of its competence, on issues of national importance, on the relationships that have developed and on their resolution. Otherwise, the process of drafting a legal framework would undermine, rather than promote, individuals' confidence in the state and the law. It is essential whether the process of elaboration of the legal framework as a whole enables to understand why the Cabinet of Ministers has established a particular restriction of fundamental rights and what are the reasons such a restriction is necessary in a democratic state governed by the rule of law (*cf. paragraph 24.2 of the Judgement of the Constitutional Court of 27 May 2021 in Case No. 2020-49-01*). The Constitutional Court has also recognised that, in an ordinary situation, the legal framework, if necessary, must be duly substantiated by explanatory studies. The legislator must also consider the risk forecasts expressed by sectoral specialists and take timely risk assessment measures (*cf. Paragraph 16.1 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*). However,

in light of the actual and legal circumstances, exceptions to these obligations to inform and to state reasons may be made, weighing and balancing the principle of good law-making against other general principles of law, including the precautionary principle.

The scope of the precautionary principle may vary by sectors. When specifying the content of the precautionary principle in relation to the development of legal framework under the circumstances of Covid-19 pandemic, the Constitutional Court has recognised that, in accordance with the precautionary principle, the state should not wait until the moment when real damage has been actually caused. Reasonable suspicion of the likelihood of such damage is sufficient for the state to take effective and proportionate measures in a timely manner to prevent the damage. Where there is a substantial and serious risk to the health and well-being of individuals, the state has a duty to take reasonable and appropriate measures to protect the fundamental rights of individuals before the adverse consequences arise. Namely, in a unique and uncertain situation, the state has the right to take decisions which are, firstly, based on a reasonable assumption and, secondly, aimed at the protection of fundamental rights (*cf. Paragraph 16.1 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26- 0106.*).

**24.2** The contested norm 1 was drafted during the emergency situation. According to Paragraph 1 of the Order No. 655 of the Cabinet of Ministers “Regarding Declaration of the Emergency Situation” of 6 November 2020 (hereinafter referred to as – Order No. 655), nationwide emergency situation was declared for the period from 9 November 2020 to 6 April 2021. During the emergency situation, the restrictions laid down in Order No. 655, including those applicable to the retail sector, were effective. According to Sub-paragraph 5.7 of the Order No. 655, provision of retail trade services on site was allowed only to the shops trading in essential goods, whereas, according to Sub-paragraph 5.8, other goods purchased via means of remote communication could also be issued at the trading sites.

The contested norm 1 entered into effect on 7 April 2021, namely, immediately after the end of the emergency situation. It arises from the annotation to Regulation No. 191, as well as from the materials for the drafting of the contested norm 1 that it was drafted as a part of the legal framework, which was aimed at gradual mitigation of the restrictions associated with the spread of Covid-19 infection after the end of the emergency situation by a series of

successive steps and ensuring trade in an epidemiologically safe environment (*see the annotation to the draft Cabinet Regulation TA-790 “Amendments to Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection”, and the video recording of the Cabinet emergency meeting of 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

It arises from the annotation to draft Regulation No. 191 TA-790 that this draft Regulation was developed on the basis of the proposals of the Inter-Institutional Coordination Group (hereinafter referred to as – the Coordination Group) on gradual mitigation of restrictions related to the spread of Covid-19 infection after the end of the declared nationwide emergency situation (*see materials of the State Chancellery Report TA-714, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). The Coordination Group developed these proposals, inter alia, in consultation with multi-sectoral group of analytical experts which assessed the Coordination Group's proposed restrictions from four different perspectives: 1) impact on prevalence of Covid-19; 2) public attitude; 3) social consequences and impact on society; 4) impact on economic activity. The Coordination Group recommended that the Cabinet of Ministers make transition to less stringent epidemiological safety requirements in four successive steps, with the first step largely maintaining a framework similar to that contained in Ordinance No. 655. The Coordination Group proposed, inter alia, as a first step, to maintain the prohibition on the operation of the large shopping centres on weekends, with the exception of shops selling essential goods, but to allow reopening of stand-alone shops and other points of sale, subject to epidemiological safety requirements (*see the presentation by the Inter-Institutional Coordination Group "Proposals for the Revision of the Measures to Limit the Spread of Covid-19" attached to the State Chancellery Report (draft TA-714), available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

The aforementioned proposals were first discussed at the Cabinet of Ministers meeting on 24 March 2021. However, the Cabinet of Ministers decided to postpone deciding on the proposals at this meeting, as it found that the proposals presented to the Analytical Expert Group for assessment were different from those submitted to the Cabinet. The Cabinet of Ministers decided to give the Analytical Expert Group time to consider the proposals of the Coordination Group that were submitted for consideration at this Cabinet meeting (*see video recording of the Cabinet meeting on 24 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

The Analytical Expert Group was invited to give its opinion at the extraordinary meeting of the Cabinet of Ministers on 26 March 2021, immediately

after the Cabinet of Ministers had heard an update on the epidemiological situation in Latvia and other European countries (*see video recording of the extraordinary meeting of the Cabinet of Ministers on 26 March 2021, available at: www.mk.gov.lv*). The Analytical Expert Group prepared and presented to the Cabinet of Ministers an opinion on the proposals prepared by the Coordination Group reflecting its conclusions on the possible impact of these restrictions on the spread of Covid-19, the economy and society, as well as on possible public attitude towards them (*see the presentation of the Analytical Expert Group of the Coordination Group "Expert Group Opinion on the Scenario of Restrictive Measures for Covid-19, Developed by the Inter-institutional Working Group (IWG)", attached to the State Chancellery Report (draft TA-714), available at: www.mk.gov.lv*). At the extraordinary meeting on 26 March 2021, the Cabinet of Ministers also heard, among others, representatives of the association "Employers' Confederation of Latvia" and the association "Latvian Chamber of Commerce and Industry" (*see video recording of the extraordinary meeting of the Cabinet of Ministers of 26 March 2021, available at: www.mk.gov.lv*). On 1 April 2021, the Cabinet of Ministers approved the draft Regulation No. 191, including the approval of the contested norm 1, which was prepared in compliance with the decisions adopted at the extraordinary meeting of the Cabinet of Ministers on 26 March (*see the video recording of the meeting of the Cabinet of Ministers of 1 April 2021, available at: www.mk.gov.lv*).

Thus, the Cabinet of Ministers at its extraordinary meeting on 26 March 2021 heard not only information on the epidemiological situation in Latvia and other European countries, including incidence and hospitalisation rates, but also the views of the analytical expert group on the impact of the regulation proposed by the Coordination Group on the prevalence of Covid-19, economy and society as a whole, as well as representatives of employers and traders. Moreover, it arises from the case materials that, during the process of development of the contested norm 1, the Cabinet of Ministers received the opinion of the association "Latvian Traders Association" on various restrictions, including restrictions on the operations of large shopping centres (*see the case file, Volume 3, file pages 101–108*).

By Paragraph 1 of Regulation No. 208, Paragraph 24<sup>18</sup> of Regulation No. 360 has been expressed in the wording of the contested norm 2, i.e., it has been supplemented by Sub-paragraph 9, according to which shops located in the large shopping centres and trading in computers, their peripheral equipment and

software, as well as telecommunication equipment, could also resume their operations. Also during the process of drafting the contested norm 2, the Cabinet of Ministers, inter alia, heard information on the prevalence of Covid-19 infection, the workload of medical institutions and the impact of Covid-19 restrictions on the economy (*see the video recording of the Cabinet of Ministers meeting of 8 April 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). It arises from the annotation to draft Cabinet Regulation TA-819 included in Regulation No. 208 that the contested norm 2 was developed taking into account the fact that computer equipment was necessary for persons to perform their work duties and participate in the learning process in a remote mode (*see the annotation to the draft Cabinet Regulation TA-819 “Amendments to Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection””, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

**24.3** The absence of a nationwide emergency situation alone does not mean that there are no longer significant threats to the health and well-being of individuals that may require urgent action by the state. The circumstances caused by Covid-19 pandemic is characterised by uncertainty and relatively rapid changes. Compared to the beginning of the pandemic, during the drafting of the contested norm 1, the Cabinet of Ministers had access to more extensive and more comprehensive information on both the SARS-CoV-2 virus and Covid-19 disease caused thereby. However, this information, in particular in view of the emergence of new SARS-CoV-2 virus strains, cannot be considered as a basis for making absolutely accurate predictions about the evolution of the situation and the extent to which the mitigation or cancellation of certain epidemiological safety requirements would pose a risk to public safety and health. Scientific studies have also acknowledged that it is impossible to make absolutely precise predictions about the effectiveness of non-pharmaceutical Covid-19 containment measures, as these are influenced by a number of factors that vary from country to country – willingness of the residents to comply voluntarily with various conditions and restrictions, choice of the residents to voluntarily avoid social contact, public awareness, etc. (*see, for example: Yacong B., Guo C., et al. Effectiveness of non-pharmaceutical interventions on COVID-19 transmission in 190 countries from 23 January to 13 April 2020. Available at: [www.ijidonline.com](http://www.ijidonline.com)*).

The annotation to Regulation No. 191 states that, at the time of the drafting included therein, the risk of prevalence of Covid-19 infection remained high and there was no downward trend in the incidence of Covid-19. As an additional risk,

the Cabinet of Ministers has taken into account the spread of new, significantly more infectious SARS-CoV-2 strains in Latvia. Thus, the epidemiological situation at the time when the contested norm 1 was being drafted showed that both an increase and a rise in the incidence were possible, and it depended on the effectiveness of precautionary and safety measures. Furthermore, almost 700 Covid-19 patients were still in hospitals and the downward trend in the number of hospitalised patients was very slow (*see the annotation to the draft Cabinet of Ministers Regulation TA-790 “Amendments to Cabinet of Ministers Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection””, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

At the extraordinary meeting of the Cabinet of Ministers on 26 March 2021, it was informed that the 14-day cumulative Covid-19 incidence per 100'000 inhabitants was 377.8 and the seven-day cumulative rate was 188.2. Meanwhile, 704 Covid-19 patients were admitted to hospitals, and 74 patients had a condition that could be described as severe. At this meeting, the Cabinet of Ministers was also informed about the significant strain on healthcare facilities due to the high number of Covid-19 patients (*see video recording of the extraordinary meeting of the Cabinet of Ministers of 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). Accordingly, the Cabinet of Ministers took into account that a rapid increase in the incidence of Covid-19 could create a serious burden for medical institutions and endanger public health in general (*see the annotation to the draft Cabinet of Ministers Regulation TA-790 “Amendments to Cabinet of Ministers Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 infection””, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

It arises from the materials of elaboration of Regulation No. 191 and the annotation to this draft Regulation that, during the process of elaboration of the contested norm 1, the Cabinet of Ministers has assessed its necessity and impact on traders and the market, as well as weighed the interests of society and traders. Whereas, assessment on whether the action was in fact necessary is to be made by ascertaining whether the restrictions have a legitimate goal and are proportionate. Namely, arguments on whether there were less restrictive alternatives to the legal framework established by the Cabinet of Ministers, which resulted in restriction of a person's fundamental rights, should be assessed by examining compliance of the relevant restriction of the fundamental right with the principle of proportionality (*cf. Paragraph 16.1 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*).

The information heard in the meetings of the Cabinet of Ministers, including the opinions of experts, allows to conclude why the contested norm 1 and the contested norm 2 were developed. Namely, the contested norm 1 was drafted as a part of the legal framework intended as the first step in the gradual mitigation of restrictions related to the spread of Covid-19 infection after the end of the emergency situation, while the contested norm 2 was adopted to provide persons with more opportunities to purchase computer equipment, given its necessity for remote working and distance learning. During the process of drafting the contested norm 1, the Cabinet of Ministers heard experts from various fields, including healthcare and economics, as well as representatives of employers and traders. Taking into account the need for immediate action and reaction to changes in the situation caused by Covid-19 pandemic, the fact that, during the process of drafting the contested norm 1, for the purpose of taking prompt and effective decisions, the Cabinet of Ministers carried out only the most necessary studies and consultations, cannot be the basis for the conclusion that the principle of good law-making has been violated. Taking into account the available information on the process of drafting the contested norm 1 and the contested norm 2, as well as the necessity to apply, inter alia, the precautionary principle under the circumstances of Covid-19 pandemic, the Constitutional Court does not establish any significant violations in the process of elaboration and issue of the contested norm 1 and the contested norm 2.

**Consequently, the restriction of the fundamental rights of the infringed trader arising from the contested norm 1 and the contested norm 2 has been established by a legal norm adopted in accordance with the procedures laid down in laws and regulations.**

**25** Any restriction on fundamental rights must be based on the circumstances and arguments as to why such a restriction is necessary, namely, the restriction is established imposed for important interests – a legitimate goal. If restriction on rights is established, then the obligation to present and substantiate the legitimate goal of such restrictions in the Constitutional Court proceedings lies first of all with the institution that has issued the contested enactment, in this particular case — the Cabinet of Ministers (*cf., for example, Paragraph 14 of the Judgement of the Constitutional Court of 12 March 2020 in Case No. 2019-11-01*).

The Cabinet of Ministers points out that the legitimate goal of the restriction of the fundamental rights of the infringed trader arising from the contested norm 1

and the contested norm 2 is protection of the rights of others by reducing the gathering of people – visitors and employees – in the large shopping centres, as well as by relieving pressure on public transport for the purposes of limitation of the spread of Covid-19 infection.

**25.1** According to Article 111 of the Constitution, the state shall protect human health and guarantee a basic level of medical assistance for everyone.

The Constitutional Court has recognised that the obligation of the state to respect, protect and ensure the right to health of a person derives from Article 111 of the Constitution. First, the obligation to respect the right to health means that the state must refrain from interfering with a person's rights and freedoms. So, actions that restrict each person's ability to protect his or her own health also should be refrained. Second, the obligation to protect the right to health means that the state must protect the individual from interference by other individuals in the implementation of his or her fundamental rights. Third, obligation to guarantee the right to health means that the state must take specific measures to implement the fundamental rights. Namely, the state must take specific steps to enable the person to implement his or her right to health. This, inter alia, means the obligation of the state to protect one group of persons from harmful effects on health caused by the activities of another group of persons (*see Paragraph 16 of the Judgement of the Constitutional Court of 19 December 2017 in Case No. 2017-02-03*).

Restriction of the fundamental rights of the infringed trader resulting from the contested norm 1 and the contested norm 2 is aimed at limiting the gathering of people in the large shopping centres, as well as at reducing the mobility of people and pressure on public transport related to going to the large shopping centres in order to limit the spread of the SARS virus-CoV-2 and prevent persons from contracting the disease Covid-19. Thus, the legal framework contained in the contested norm 1 and the contested norm 2 is aimed at ensuring a person's right to health. Consequently, restriction of the fundamental rights of the infringed trader arising from these norms has a legitimate goal – protection of the rights of other persons.

**25.2** The information heard at the Cabinet of Ministers meeting on 26 March 2021 on persons who contracted Covid-19, as well as the opinions of representatives of healthcare institutions, show that a significant number of persons who contracted Covid-19 required hospitalisation, and the number of hospitalised persons caused significant strain on the healthcare system. Under the particular circumstances, it should also be taken into account that persons

diagnosed with Covid-19 who do not require hospitalisation are obliged to comply with isolation under Chapter IX of Regulation No. 360. A person sick with Covid-19 who complies with the isolation could have been issued with a sick-leave certificate in accordance with Sub-paragraph 2.5 of Regulation 360. Even the persons sick with Covid-19 who did not require hospitalisation may have needed healthcare.

Therefore, rapid, uncontrolled spread of Covid-19 infection is associated with significant risks for the entire society, i.e., uncontrolled spread of Covid-19 could have caused overload of the health sector and threaten the continuity of healthcare and treatment services. Preventing this may require limiting access to healthcare services. For example, the emergency situation was declared by Order No. 655, inter alia, to alleviate the risk of overloading the health system, and, in accordance with this Order, provision of certain treatment services was restricted (*see Paragraphs 5.46, 5.47, and 5.48 of Order No. 655*). Preventing the overload of healthcare system is important for the well-being of the entire society, as the ability of all citizens to receive healthcare and thus to implement their right to health depends on proper functioning of the healthcare system not only in the case of contracting Covid-19, but also in the case of other health disorders.

**Consequently, the legitimate goals of the restriction of the fundamental rights of the trader affected by the contested norm 1 and the contested norm 2 are protection of the rights of others and the welfare of society.**

**26** In establishing whether the restriction of fundamental rights contained in a legal norm is proportionate, the Constitutional Court assesses whether the restriction has been applied to achieve the legitimate goal, whether its legitimate goal cannot be achieved by other means which are less restrictive on the individual's fundamental rights, and whether the benefit which the society gains from the established restriction outweighs the harm caused to an individual. If, upon assessment of a legal norm, it is recognised that the restriction of fundamental rights contained therein does not comply with at least one of these criteria, then the contested norm does not comply with the principle of proportionality and is unlawful (*see, for example, Paragraph 20 of the Judgement of the Constitutional Court of 28 September 2020 in Case No 2019-37-0103*).

**27** When assessing whether the means chosen by the Cabinet of Ministers are appropriate to achieve the legitimate goals of the restriction of the fundamental

rights of the infringed trader, the Constitutional Court must examine whether those legitimate goals can be achieved by the means chosen (*cf. Paragraph 19 of the Judgement of the Constitutional Court of 11 December 2020 in Case No 2020-26-0106*).

The LLC (SIA) “Jysk” maintains that the means chosen by the Cabinet of Ministers are not appropriate to achieve the legitimate goals, since shoppers, being unable to shop in the large shopping centres, have used public transport to get to other shops, which, besides failure to relieve pressure on public transport, increased gathering in other, trading sites. On the contrary, the Cabinet of Ministers considers that the legal framework contained in the contested norm 1 and contested norm 2 is appropriate for the protection of the rights of others, as it has made it possible to reduce the gathering of both shoppers and employees of large shopping centres in large shopping centres, as well as to relieve pressure on public transport.

The contested norm 1 and the contested norm 2 established restrictions on the operation of shops located in the large shopping centres. These norms did not impose restrictions on public transport service providers or conditions for the use of public transport, nor did they regulate trading at other trading sites. Thus, impact of these norms on pressure on public transport and other trading sites could have only been indirect. According to the data on public transport services provided by the Riga Municipal Limited Liability Company “Rīgas Satiksme”, during the period when these norms were effective, the average number of passengers carried per day fluctuated from week to week (*see the case file, Vol. 5, file pages 37–40*). However, this information alone does not allow making conclusions as to the reasons for these fluctuations. People's mobility and use of public transport services depend on a variety of factors – people's individual needs, their perception of the need to visit certain places under the circumstances of Covid-19 pandemic and other factors. Therefore, the Constitutional Court does not find such actual circumstances and does not see such arguments that could justify the appropriateness of the means chosen by the Cabinet of Ministers to relieve pressure on public transport.

The Cabinet of Ministers points out that the means chosen by it are appropriate to achieve the legitimate goals of the restriction of the fundamental rights, since the legal framework contained in the contested norm 1 and the contested norm 2 has prevented also the gathering of employees of large shopping centre shops in work teams, thus reducing the spread of Covid-19 infection among

the members of the work team. Annotation to the draft Cabinet of Ministers Regulation No. 191 TA-790 points out that high risk of spreading Covid-19 infection exists in large work teams, which are typical for the large shopping centres (*see the annotation to the draft Cabinet of Ministers Regulation TA-790 “Amendments to Cabinet of Ministers Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 infection””, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). However, it should be kept in mind that, during the emergency situation, according to point 5.7 of Order No. 655, only traders selling the goods defined in that norm were entitled to provide retail services on site. By adopting Regulation No. 191, the Cabinet of Ministers decided to allow reopening all shops and points of sale, except those located in the large shopping centres. Furthermore, even in the large shopping centres, in accordance with the contested norm 1 and the contested norm 2, continuing the operation was allowed only to the categories of exceptions specified in these norms. Taking into account the aforementioned, the Constitutional Court concludes that the legal framework contained in the contested norm 1 and the contested norm 2 is not appropriate to prevent the spread of Covid-19 infection among sales workers.

However, the legal framework contained in the contested norm 1 and the contested norm 2 allowed to significantly reduce the number of visitors to the large shopping centres and, consequently, gathering in the large shopping centres.

The SARS coronavirus-CoV-2, which causes contracting Covid-19, is spread by small droplets that are released from the airways when people talk, cough or sneeze. Non-pharmaceutical measures – social distancing, restriction of gathering, wearing a face mask, hand washing, surface disinfection – are scientifically well-established as effective means for limiting the spread of respiratory droplet viruses, including SARS-CoV-2. The effectiveness of such measures was already recognised before the Covid-19 pandemic (*see, for example, the World Health Organisation publication “Non-pharmaceutical public health measures for mitigating the risk and impact of epidemic and pandemic influenza”, 19 September 2019. Available at: [www.who.int](http://www.who.int)*). The European Centre for Disease Prevention and Control recommended the use of non-pharmaceutical interventions also to control the spread of Covid-19 infection, stressing that, with the exception of vaccination, non-pharmaceutical measures form the most effective mean to limit the spread of infection (*see the European Centre for Disease Prevention and Control publication”, 24 September 2020. Available at: [www.ecdc.europa.eu](http://www.ecdc.europa.eu)*).

Scientific publications describing studies on the effectiveness of non-pharmaceutical interventions in limiting the spread of SARS-CoV-2 lead to different conclusions about the effectiveness of specific non-pharmaceutical interventions. These differences can be explained by the methodology chosen for the studies, the selection of data available to and used by researchers, as well as individual factors of countries that are difficult to incorporate into an effectiveness assessment, such as the demographic situation of the country, regulatory nuances of the specific non-pharmaceutical measures, and simultaneous application and sequence of introduction of several non-pharmaceutical means. However, the scientific studies clearly lead to unequivocal conclusion that non-pharmaceutical measures, in particular measures that prevent people from gathering at places of high concentration of people, namely, closing schools, universities, workplaces, and trading sites can significantly reduce the spread of SARS-CoV-2 (*see, for example: Brauner J. M., Mindermann S. et al. Inferring the effectiveness of government interventions against COVID-19. Available at: [www.science.org](http://www.science.org); Hunter P. R., Colón-González F. J. et al. Impact of non-pharmaceutical interventions against COVID-19 in Europe in 2020: a quasi-experimental non-equivalent group and time series design study. Available at: [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov); Sharma M., Mindermann S. et al. Understanding the effectiveness of government interventions against the resurgence of COVID-19 in Europe. Available at: [www.nature.com](http://www.nature.com)). Also Dr. med. Uga Dumpis and Dr. med. Ģirts Briģis stresses that non-pharmaceutical measures that restrict people's opportunities to contact with each other are effective in reducing the spread of SARS-CoV-2.*

Thus, the non-pharmaceutical measures provided for in the contested norm 1 and in the contested norm 2, namely, the restrictions on the operation of the shops located in the large shopping centres, allows to reduce effectively the risk of persons contracting Covid-19 and exposing other persons to such a risk. Thus, the means chosen by the Cabinet of Ministers are appropriate for achieving the legitimate goal – protection of the rights of others.

Ability of the state to ensure the fundamental personal rights contained in Article 111 of the Constitution to everyone is directly dependent on the ability of the healthcare system to provide a person who suffers from a health disorder with the necessary medical assistance. Given the limited resources of the healthcare system, a sudden and rapid increase in the number of patients can make functioning of the health system difficult or even jeopardise it altogether.

The spread of SARS-CoV-2 posed significant threats of overload of the healthcare system from the beginning of the pandemic, and not only in relation to the care of Covid-19 patients. The indirect consequences of the spread of Covid-19, such as the difficulties associated with the need to assess a patient's health status during a remote consultation, additional administrative burden of remote consultations, significant number of patients whose treatment was delayed due to the limited availability of healthcare services and who sought treatment at a later stage, after the end of the previously declared nationwide emergency situations, also created additional pressure on physicians of certain specialities, including general practitioners (cf. *Report of the Project No. VPP-COVID-2020/1-0011 "Impact of the Covid-19 Pandemic on the Healthcare System in Latvia: Experiences and Future Solutions" of the National Research Programme "For Mitigation of Covid-19 Consequences"*, p. 46–74. Available at: [www.rsu.lv](http://www.rsu.lv)).

Non-pharmaceutical interventions that limit the spread of SARS-CoV-2 and thus reduce the incidence of Covid-19 can slow down the rate of increase in the number of Covid-19 patients requiring healthcare provided by a medical practitioner. Preventing a rapid increase in the number of Covid-19 patients reduces the risk of overloading the healthcare system. This ensures that the healthcare system is able to function under the circumstances of Covid-19 pandemic and, to the extent possible, to provide the necessary healthcare also to patients suffering from other health disorders. The means chosen by the Cabinet of Ministers are therefore also appropriate for the protection of public welfare.

**Therefore, the means chosen by the Cabinet of Ministers are appropriate to achieve the legitimate goals of the restriction of the fundamental rights of the infringed trader – to ensure protection of the rights of others and the welfare of society.**

**28** The restriction of fundamental rights determined by the legal norm is necessary where there are no other means which would be equally effective and the choice of which would be less restrictive on the fundamental rights of individuals. A more lenient mean is not any other one, but only such a mean by which the legitimate goal can be achieved at least at the same quality (*see, for example, Paragraph 14 of the Judgement of the Constitution Court of 7 October 2010 in Case No. 2010-01-01*).

The LLC (SIA) “Jysk” maintains that the restriction of the fundamental rights of the infringed trader resulting from the contested norm 1 and the contested norm 2 is not necessary, since its legitimate goals can be achieved at the same quality by other means which are less restrictive on the fundamental rights of individuals. Namely, those legitimate goals of the same quality allegedly could have been achieved by a regulation which would allow continuing operations to those shops located in the large shopping centres which are not subject to the exceptions laid down in the contested norm 1 and in the contested norm 2, but which can be provided with a separate external access. Whereas, the Cabinet of Ministers maintains that there are no other, more lenient means by which these goals could be achieved at the same quality, since it was necessary to ensure a gradual mitigation of the restrictions related to the spread of Covid-19 infection after the end of the emergency situations in order to be able to monitor changes in actual conditions and anticipate possible developments in the situation.

Under the circumstances where there is uncertainty and immediate state action is necessary to protect important rights and legitimate interests of individuals or of society, the precautionary principle also plays an important role in assessing the proportionality of a restriction of fundamental rights. In accordance with this principle, the institution which issues a regulatory enactment and, inter alia, assesses whether the legitimate goals of restriction of fundamental rights provided for in the legal regulation could not be achieved at the same quality by more lenient means, has the right, in case of doubt, to choose among several possible alternatives the solution which is more likely to ensure the protection of the rights and interests of individuals or society. However, the precautionary principle does not mean that the institution which issues a regulatory enactment is exempt from the obligation to assess and ascertain whether there are other, more lenient means which could ensure the achievement of the legitimate goals in question at the same quality.

The norm Chapter II<sup>1</sup> of Regulation No. 360, in the wording effective from 7 April to 1 June 2021, imposed different conditions on the owners of various trading sites and traders. According to Regulation No. 360, Paragraphs 24<sup>1</sup>–24<sup>6</sup>, area of public space of 25 m<sup>2</sup> per each visitor was supposed to be ensured at the trading site, besides, control of the flow of visitors had to be ensured, inter alia, by displaying information on the maximum number of visitors allowed at the trading site, providing an adequate number of shopping baskets, trolleys or bags and preventing crush of visitors. Paragraph 24<sup>9</sup> of Regulation No. 360 laid down the

requirements for the market operator with regard to trade in market pavilions – enclosed buildings located in the market area, designed for permanent and systematic trading and used by at least 10 traders. Whereas, Paragraphs 24<sup>7</sup>, 24<sup>8</sup>, as well as Paragraphs 24<sup>10</sup>–24<sup>14</sup> of Regulation No. 360 provided for the obligations of the trader, owner or legal possessor of the shopping centre and the market manager with regard to the fulfilment of the conditions for controlling the number and flow of visitors at the relevant trading site. All the aforementioned norms, according to Paragraph 24<sup>15</sup> of Regulation 360 applied only to indoor sales. Outdoor trading – street trading and trading in the open market area – was regulated by Paragraphs 24<sup>15</sup>–24<sup>17</sup> of Regulation No. 360. Whereas, Paragraph 24<sup>18</sup> of Regulation No. 360 contained the Contested Regulation, which applied only to the large shopping centres.

According to the norms of Chapter II<sup>1</sup> of Regulation No. 360, during the period of validity of the Contested Regulation, any shop and trading site could continue operation, and only in the large shopping centres only certain shops falling within the category of exceptions were allowed to operate. According to the contested norm 1 and the contested norm 2, only shops selling certain categories of goods could operate in the large shopping centres. Those norms did not stipulate an exception in respect of shops which could be provided with a separate external access – such an exception was included in the Contested Regulation only by the contested norm 3. In contrast, in accordance with these norms, trade was allowed in shops arranged on separate premises other than the large shopping centres, as well as on commercial premises with less than five shops altogether, in shopping centres with the area of less than 7,000 m<sup>2</sup> (hereinafter referred to as – small shopping centres) and market pavilions traded subject to the requirements set regarding the number and the control of the flow of visitors. However, with regard to the outdoor points of sale – points of street sale and open market areas – the conditions were even less restrictive. In particular, outdoor points of sale were also required to prevent crush of visitors and ensure compliance with social distancing rules, but did not have to comply with a specific maximum number of simultaneous visitors.

Thus, it follows from the norms of Chapter II<sup>1</sup> of Regulation No. 360 that, during the period of validity of the contested norm 1 and the contested norm 2, the Cabinet of Ministers in essence allowed operation of all the other trading sites regardless of their size and type of goods sold, provided that the requirements of

epidemiological safety are complied with, namely, by controlling the flow of visitors and – in case of indoor trade – also the number of visitors. Whereas, shops of a large shopping centre which were not subject to the exceptions laid down in the contested norm 1 and norm 2 were not allowed to operate regardless of whether it was possible to cordon off those shops from the common-use areas of the shopping centre and provide them with separate external access.

The Cabinet of Ministers did not see any significant risks of spreading Covid-19 infection in relation to sales in shops set up on separate premises, as people move between these shops in outdoor areas where the risk of spreading Covid-19 infection is allegedly minimal (*see video recording of the extraordinary meeting of the Cabinet of Ministers on 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). The Constitutional Court concludes that, in terms of the risk of spreading Covid-19 infection, there is no significant difference between a shop located in a large shopping centre, cordoned off from the common-use premises of the shopping centre, and provided with a separate external access, and any other shop arranged on separate premises and with a separate external access. While going to shops located in a large shopping centre and provided with a separate external access, visitors would move outdoors and therefore would not be at a higher risk of the spread of Covid-19 than people moving outdoors between several shops and points of sale set up on separate premises.

The materials for drafting the contested norm 1 do not provide an explanation as to why the Cabinet of Ministers considered it necessary to establish such a regulation which would allow reopening shops arranged on separate premises, but at the same time prohibiting the operation of, inter alia, shops which are located in large shopping centres and may be provided with a separate external access. Norms of Chapter II<sup>1</sup> of Regulation No. 360 contained requirements to provide control over the maximum permissible number and flow of visitors to the trading sites, which applied equally to all indoor trading sites (the maximum number of simultaneous visitors to a shopping centre was to be determined in accordance with paragraph 24<sup>7</sup> of Regulation No. 360 by summing up the maximum number of visitors to the trading sites – shops – located on the shopping centre's premises). Therefore, even if the operation of shops located in a large shopping centre and provided with a separate external access would result in an increased flow of visitors to the large shopping centre, the concentration of visitors in the common-use areas of the large shopping centre could not exceed the

maximum established number in accordance with the aforementioned norms of Regulation No. 360.

Taking into account the regulation contained in Chapter III of Regulation No. 360, it can be concluded that the legitimate goals of the restriction of the fundamental right contained in the contested norm 1 and the contested norm 2 would be equally effectively achieved by a legal regulation which would allow the continuation of operations also in the shops of a large shopping centre which can be separated from the common premises of the shopping centre and to which a separate external access can be provided. Such a regulation would be less restrictive on the fundamental rights of individuals, as it would allow the traders concerned to generate income from trading in these shops. Therefore, there are other means which would be less restrictive on the fundamental rights of the infringed trader and by which it would be possible to achieve the legitimate goals of the restriction of that trader's fundamental rights at the same quality.

**Hence, the contested norm 1 and the contested norm 2, insofar as they apply to the infringed trader, are non-compliant with the first and third sentences of Article 105 of the Constitution.**

**29** In the present case, the Constitutional Court must also assess whether the established restriction of the right of the owner of a large shopping centre to own property contained in the first and third sentences of Article 105 of the Constitution, which results from the entire Contested Regulation manifests as a general prohibition on the operation of shops of a large shopping centre with certain exceptions, is compliant with the Constitution. In essence, the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” request the Constitutional Court to declare such a restriction of the fundamental rights of the owner of a large shopping centre non-compliant with the first and third sentences of Article 105 of the Constitution.

In Paragraphs 21 and 22 of this Judgement, the Constitutional Court already concluded that restriction of the fundamental rights of both the infringed trader and the owner of the large shopping centre arose from the Contested Regulation, and that these restrictions, due to their different nature, must be assessed separately. At the same time, it should be taken into account that both of these restrictions of fundamental rights arise from the restrictions on the operation of shops of the large shopping centres stipulated in the Contested Regulation.

In Paragraph 24 of this Judgement, the Constitutional Court already assessed whether the restriction of the fundamental rights of the infringed trader

arising from the contested norm 1 and the contested norm 2 has been established by a legal norm adopted in accordance with the procedures provided for in laws and regulations. The aforementioned conclusions of the Constitutional Court are equally applicable to the restriction of the fundamental rights of the owner of a large shopping centre arising from the contested norm 1 and the contested norm 2. Consequently, the Constitutional Court does not need to assess separately whether the restriction of the fundamental rights of the owner of a large shopping centre arising from the contested norm 1 and the contested norm 2 has been established by a legal norm adopted in accordance the procedures provided for in laws and regulations.

Whereas, the contested norm 3 entered into effect after the Cabinet of Ministers adopted Regulation No. 309, which contained norms from the draft Cabinet Regulations TA-1158, TA-1153, TA-1156, and TA-1159, approved at the Cabinet of Ministers meeting on 18 May 2021. Regulation No. 309 was published in the Official Gazette “Latvijas Vēstnesis” on 19 May 2021 (Official Publication No. 2021/95A.1). In accordance with Paragraph 3 of Regulation No. 309, Paragraph 24<sup>18</sup> of Regulation No. 360 was supplemented by Sub-paragraph 10, which stated that shops located in large shopping centres may also operate provided that visitors have a separate external access (external entrance) to the trading site. The parties have not raised any objections regarding the compliance of the drafting process of Paragraph 3 of Regulation No. 309 with the requirements of legal norms. The Constitutional Court also does not find that there have been any significant violations in the process of drafting and issuing this norm. Taking into account the aforementioned, the Constitutional Court finds that the restriction of the fundamental rights of the owner of a large shopping centre arising from the Contested Regulation has been established by a legal norm adopted in accordance with the procedure provided for in laws and regulations.

The only difference between the wordings of the Contested Regulation – contested norm 1, contested norm 2 and contested norm 3 – is in the list of exceptions set out therein, which was supplemented by a new exception with each successive wording. Essentially, each wording of the Contested Regulation results in the same restriction of the fundamental rights of the owner of a large shopping centre – the Contested Regulation restricted the right of the owner of a large shopping centre to freely dispose of its property, i.e., to lease the premises of the large shopping centre and to gain benefit from it. In Paragraph 25 of this Judgement, the Constitutional Court already ascertained the legitimate goals of the

restriction of the fundamental rights of the infringed trader arising from the contested norm 1 and the contested norm 2, and, in Paragraph 27 of this Judgement, the Constitutional Court already assessed the appropriateness of the means chosen by the Cabinet of Ministers to achieve these legitimate goals.

Taking into account the fact that the restriction of the fundamental rights of both the infringed trader and the owner of the large shopping centre arises from the Contested Regulation and, furthermore, each wording of the Contested Regulation results in essentially equal restriction of the fundamental rights of the owner of a large shopping centre, the Constitutional Court's conclusions concerning the legitimate goals of restriction of the fundamental rights of the infringed trader and suitability of the means chosen by the Cabinet of Ministers to achieve these legitimate goals are equally applicable also to the restriction of the fundamental rights of owner or the large shopping centre. Thus, restriction of the fundamental rights of the owner of a large shopping centre arising from the Contested Regulation also has legitimate goals – protection of the rights of others and public welfare – and the means chosen by the Cabinet of Ministers are appropriate for achieving these legitimate goals.

Consequently, the Constitutional Court will separately assess only the necessity of the restriction of the fundamental rights of the owner of a large shopping centre, as well as examine whether the benefit gained by society from the restriction of the fundamental rights of the owner of a large shopping centre outweighs the harm caused to his rights.

**30** The LLC (SIA) “VRPB” and the LLC (SIA) “Domina” consider that the legitimate goals of the restriction of fundamental rights of the owner of a large shopping centre can be achieved equally effectively by other, more lenient means. A more lenient mean would be such a regulation, which would allow operation of all the shops of the large shopping centre by imposing stricter epidemiological safety requirements, including ventilation and air quality requirements. Whereas, the Cabinet of Ministers maintains that there are no more lenient means to achieve the legitimate goals of the restriction of the fundamental rights, since the Contested Regulation was necessary to ensure a gradual transition to less stringent restrictions related to the spread of Covid-19 infection assessing changes in the actual situation and forecasting its possible development in accordance with the precautionary principle.

Scientific studies on the effectiveness of individual non-pharmaceutical measures, as well as on the effectiveness of multiple simultaneously applied non-pharmaceutical measures, have led to conclusion that it is not possible to make absolutely precise predictions as to the effectiveness of a particular combination of non-pharmaceutical measures in a given country, as the aforementioned individual circumstances typical for the countries must be taken into account, as well as the fact that countries tend to establish different combinations of non-pharmaceutical measures that cannot be directly compared with other, different combinations of non-pharmaceutical measures. However, scientific studies lead to several significant conclusions about the effectiveness of combinations of these measures. Firstly, introduction of a new measure in addition to those already in place usually increases effectiveness of the whole set of non-pharmaceutical measures already identified. Secondly, as the Constitutional Court has already indicated above, non-pharmaceutical measures which generally prevent people from coming into contact at places characterised by a high risk of spreading the virus, such as closure of schools, universities, workplaces, places of entertainment, and shops, are much more effective than measures designed to protect people in circumstances where they continue gathering and come into contact, such as social distancing and the obligation to wear a face mask (*see, for example: Brauner J. M., Mindermann S. et al. Inferring the effectiveness of government interventions against COVID-19. Available at: <https://www.science.org>*).

The Constitutional Court has also previously recognised that, taking into account the spreading channels of the SARS-CoV-2 virus, there can be no doubt that the closure of such places of gathering where persons can easily come into close contact with other persons was one of the necessary security measures to be taken both to protect the visitors to such places and to protect public health as a whole. Namely, this prevented the possibility that people would infect each other by staying on the same premises, coming into contact with each other and using the same objects (*cf. Paragraph 20.2 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*).

The restrictions on the operation of shops located in the large shopping centres stipulated in the Contested Regulation prevented visitors from gathering in shops located in the large shopping centres which were not subject to the restrictions stipulated in the Contested Regulation, and thus significantly reduced the possibility for visitors to gather and interact also in the common-use areas of the large shopping centre. Gatherings and contacting among persons invariably

carry a risk of spreading SARS-CoV-2 which can be significantly reduced by non-pharmaceutical measures such as wearing face masks, social distancing, limiting contact time, etc., but cannot be eliminated altogether, especially as such non-pharmaceutical measures lose their effectiveness if they cannot be effectively monitored in practice. Accordingly, more lenient means of achieving the legitimate goals of the restriction of the fundamental rights of the owner of a large shopping centre cannot be considered to be regulation which would allow all the shops of the large shopping centre to continue operation, namely, gathering and interaction of people at these trading sites, even if these trading sites or large shopping centres in general were subject to stricter epidemiological safety requirements, including requirements related to air quality, the number of visitors and control of the flow of visitors.

**Consequently, there are no more lenient means by which the legitimate goals of the restriction of the fundamental rights of the owner of a large shopping centre arising from the Contested Regulation could be achieved in the same quality.**

**31** In order to determine whether the Contested Regulation strikes a fair balance between the public benefit from the regulation and harm caused to the rights of the owner of a large shopping centre, it is necessary to assess whether the adverse consequences caused to the owner of the large shopping centre by the restriction of the owner's fundamental rights outweigh the benefit gained by the public as a whole due to this restriction. In the present case, the right of the owner of a large shopping centre to freely dispose of his property, namely to lease the premises of a large shopping centre which he owns and to benefit therefrom, on the one hand, and the interests of human health and well-being covered by the legitimate goals of the restriction of the fundamental right, on the other hand, are to be compared.

**31.1** The LLC (SIA) "VRPB" and the LLC (SIA) "Domina" maintains that the adverse effects caused by the restriction of the fundamental rights of the owners of the large shopping centres outweigh the public benefit gained from the Contested Regulation, taking into account its impact on their income during the validity period of that regulation, as well as its long-term effects on competition and the shopping habits of shoppers. Furthermore, these commercial companies consider that restriction of the fundamental rights of the owner of a large shopping centre is not proportionate as it is also not in line with the principle of legitimate

expectations. According to the opinion of the LLC (SIA) “VRPB” and the LLC (SIA) “Domina”, the Cabinet of Ministers was obliged to determine the transitional period before the contested norm 1 entered into effect, as well as to determine the specific period of validity of the Contested Regulation. In contrast, the Cabinet of Ministers maintains that it has ensured a reasonable balance between the rights of the owner of a large shopping centre and the public interest, inter alia, by imposing state aid measures for the owners of the large shopping centres.

The Contested Regulation interfered with the right of the owner of the large shopping centre to use the property at their own discretion, including to lease the premises of the large shopping centre and gain benefit from it, affecting the rights of the owner of a large shopping centre in several respects. First, the ability of the owner of the large shopping centre to generate income from traders leasing space in the large shopping centre was restricted. Second, premises of the large shopping centre became less attractive to new lessees. Thus, competitiveness of the owners of large shopping centres in the market of commercial premises in relation to other owners of trading sites was affected negatively. The Cabinet of Ministers was aware that the Contested Regulation has caused unequal conditions of competition in the market and took into account this effect both when drafting and adopting the contested norm 1 and when deciding to delete the contested norm 3 from Regulation No. 360 (*see draft Cabinet Regulation TA-790 “Amendments to the draft Cabinet Regulation No. 360 of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection”, and annotations to the draft Cabinet Regulation TA-1254 “Amendments to the Cabinet Regulation of 9 June 2020 No. 360 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection””, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). There is also no doubt that commercial activity is important for the development of a country's economy and that disruptions of commercial activity has a negative impact not only on traders and owners of trading sites themselves, but also on the national economy as a whole.

However, in the present case, the importance of the rights and legitimate interests protected by the Contested Regulation must be taken into account. The right to health applies directly to everyone and is an essential precondition for the exercise of all the other fundamental rights. The Constitutional Court previously, when assessing the balance between the rights and interests of merchants and the protection of public health in the context of other measures taken to limit the spread of Covid-19, recognised that the rights and interests of public protected by such

measures were relevant to a much wider range of persons than only the rights and legitimate interests of individual merchants. In other words, society as a whole benefits from such a restriction, furthermore, in many ways, as the regulation in question protects both the people themselves from getting sick and the healthcare system from being overloaded. Given the spread of the virus causing Covid-19 and the threat it poses to the health system, the legitimate interests of individual merchants cannot be placed above those of society as a whole (*cf. Paragraph 22.1 of the Judgement of the Constitutional Court of 11 December 2020 in Case No. 2020-26-0106*).

The LLC (SIA) “VRPB” and the LLC (SIA) “Domina” are of the opinion that the restriction of the fundamental rights established in the Contested Regulation has caused significant damage to the society and the state, which has manifested as increase in the unemployment rate, lower state budget revenue, the need to provide state aid to the merchants affected by the restriction of the fundamental rights and the workload of the judicial system in connection with disputes over rent and new insolvency proceedings. However, in the present case it should also be taken into account that the Contested Regulation did not prohibit the operation of large shopping centres in their entirety, nor did the norms of Regulation No. 360 prohibit the operation of traders which operated outside the large shopping centres. Moreover, the Contested Regulation was effective for a short period of time – approximately two months. Thus, the Contested Regulation only temporarily affected certain groups of traders and owners of commercial premises. Therefore, the adverse impact of this regulation on economy and competition cannot be considered to outweigh the public benefits of protecting the human right to health and public welfare under the conditions of Covid-19 pandemic.

Finally, it should also be noted that the merchants affected by the measures established to limit the spread of Covid-19 were provided with the opportunity to receive the state aid which helped mitigating the damage they suffered. In accordance with Cabinet of Ministers Regulation No. 229 of 8 April 2021 “Regulations on Support for Shopping Centres Affected by the Covid-19 crisis”, owners of the large shopping centres were given the opportunity to receive a grant to compensate the decrease in rent turnover of the shopping centres they owned.

**31.2** The LLC (SIA) “VRPB” and the LLC (SIA) “Domina” maintain that the restriction of fundamental rights is not proportionate, because, by the Contested Regulation, the Cabinet of Ministers has allegedly violated the principle of

legitimate expectations by not establishing a reasonable transitional period before the entry of the contested norm 1 into effect. Namely, the contested norm 1 entered into effect six days after its adoption, which is allegedly too short period of time for a merchant to adapt to the new legal framework.

The principle of legal certainty guarantees a predictable environment and requires people to be able to plan their lives with confidence, knowing the legal consequences of their actions. One of the aspects of the principle of legitimate expectations is protection of legitimate expectations (*see Paragraph 21.4 of the Judgement of the Constitutional Court of 19 February 2021 in Case No. 2020-23-01*). The Constitutional Court has recognised that the principle of legitimate expectations does not give grounds to rely on the fact that the legal situation once established will never change. This principle not only does not exclude, but in certain circumstances even requires amendment to the existing legal framework. Otherwise, the state would not be able to respond properly to changing living conditions. Accordingly, the Cabinet of Ministers, when adopting regulatory enactments, must also ensure the protection arising from the principle of legitimate expectations against inconsistent state action, but this obligation cannot be viewed in isolation from the circumstances that have initiated the development and adoption of the relevant regulation (*cf. Paragraph 29.3 of the Judgement of the Constitutional Court of 27 May 2021 in Case No. 2020-49-01*).

In Paragraph 24.2 of this Judgement, the Constitutional Court already established that Regulation No. 191 was adopted in order to gradually mitigate the restrictions on trade that existed during the emergency situation. With regard to trade in the large shopping centres, the Cabinet of Ministers decided to maintain the same restrictions as those laid down in Order No. 655 during the emergency situation, namely, a general prohibition on the operation of shops in the large shopping centres, with certain exceptions. Accordingly, it cannot be established that the Contested Regulation has introduced such a change to the legal circumstances that the owner of a large shopping centre would have to take substantial measures to adapt. It does not arise from the principle of legitimate expectations that the Cabinet of Ministers is obliged to establish a transitional period, if the new legal framework it has adopted does not substantially change the legal circumstances.

The LLC (SIA) “VRPB” and the LLC (SIA) “Domina” maintain that the Cabinet of Ministers has violated the principle of legitimate expectations also in the sense that it has not set a specific period of validity of the Contested Regulation.

The Constitutional Court has previously recognised that the legislator is obliged to periodically consider whether a given legal framework is still effective, appropriate and necessary and whether it should be improved in any way. Such an obligation is equally applicable also to the Cabinet of Ministers (*see Paragraph 19 of the Judgement of the Constitutional Court of 8 December 2015 in Case No. 2015-07-03*). Namely, every institution that issues regulatory enactments is obliged to periodically review the legal framework established by it to assess its necessity in accordance with changes in factual and legal circumstances, which may be difficult or even impossible to predict at the moment of adoption of a legal norm (*cf. Paragraph 14.2 of the Judgement of the Constitutional Court of 2 May 2012 in Case No. 2011-17-03 and Paragraph 8.2 of the Judgement of 3 December 2021 in Case No. 2021-12-03*). This ensures compliance of the legal framework with the actual needs of society.

A specific period of validity of the legal framework would provide greater legal certainty, allow persons to plan their actions in the long term and could give them a protected legitimate expectation. However, if the body issuing regulatory enactments was obliged to set a specific time limit for the validity of a legal framework and was not entitled to amend the relevant legal framework before the expiry of the set time limit or to maintain the legal regulation in effect beyond that time limit, its ability to react promptly to changes in factual and legal circumstances would be severely limited. The body which adopts regulatory enactments is generally entitled to set a specific validity period of a legal framework, if it considers such an approach to be expedient and effective, *inter alia*, also in order to ensure greater legal certainty. However, neither the principle of legitimate expectations nor the principle of legal certainty requires a body to set such a time limit.

Thus, by adopting the Contested Regulation, the Cabinet of Ministers has not violated the principle of legitimate expectations, and the public benefit from the restriction of the fundamental rights of the owner of a large shopping centre contained in the Contested Regulation outweighs the harm caused to the owner's rights and legitimate interests.

**Consequently, the Contested Regulation, insofar as it applies to the owner of a large shopping centre, complies with the first and third sentences of Article 105 of the Constitution.**

**32** The Applicants also requested that the Contested Regulation be declared non-compliant with the first sentence of Article 91 of the Constitution, which contains the principle of legal equality. They consider that the Contested Regulation unjustifiably establishes a difference in treatment between groups of persons who are in the same circumstances comparable by certain criteria.

Having established non-compliance of the contested norm with at least one Article of the Constitution, it should be recognised as unlawful, null and void; therefore, it is not necessary to further assess its compliance with other norms of the Constitution (*see, for example, Paragraph 13 of the Judgement of the Constitutional Court of 2 November 2020 in Case No. 2020-14-01*). In Paragraph 28 of this Judgement, the Constitutional Court has already recognised the contested norm 1 and the contested norm 2 as non-compliant with the first and third sentences of Article 105 of the Constitution, insofar as they apply to the infringed trader. However, taking into account the significant impact of the legal framework intended to restrict the spread of Covid-19 on the fundamental rights of individuals, the importance of the rights and legitimate interests of members of society protected by this framework, as well as the significant importance of the principle of legal equality in the development of any legal framework, the Constitutional Court considers it necessary to assess in the given case whether the contested norm 1 and the contested norm 2 comply with the principle of legal equality, insofar as they apply to the infringed trader.

The LLC (SIA) “Jysk” has provided arguments on the non-compliance of the contested norm 1 and the contested norm 2 with the principle of legal equality insofar as they apply to the infringed trader. Whereas, the LLC (SIA) “VRPB” and the LLC (SIA) “Domina” have provided arguments on the non-compliance of the entire Contested Regulation with the principle of legal equality with regard to the owner of a large shopping centre. Consequently, the Constitutional Court will first assess the compliance of the contested norm 1 and the contested norm 2 with the principle of legal equality in relation to the infringed trader, and then – the compliance of the entire Contested Regulation with the principle of legal equality in relation to the owner of the large shopping centre.

**33** In order to verify whether the Contested Regulation complies with the first sentence of Article 91 of the Constitution, the Constitutional Court must establish:

1) whether and which persons (groups of persons) are comparable and whether they are in the same or different circumstances;

2) whether the Contested Regulation provides for equal treatment of persons in different circumstances or differential treatment of persons in the same circumstances;

3) whether such treatment is established by a legal norm adopted in accordance with the procedures laid down in laws and regulations;

4) whether such treatment has an objective and reasonable basis, namely, whether it has a legitimate goal and whether the principle of proportionality has been complied with (*cf. Paragraph 8 of the Judgement of the Constitutional Court of 2 November 2020 in Case No. 2020-14-01*).

**34** The Constitutional Court has recognised that when assessing whether and which persons are in circumstances comparable by certain criteria, it is necessary to establish the main unifying feature of the group of persons concerned. At the same time, the Constitutional Court must assess whether there are any additional significant considerations indicating that the groups of persons concerned are not in mutually comparable circumstances (*see, for example, Paragraph 32 of the Judgement of the Constitutional Court of 27 May 2021 in Case No. 2020-49-01*).

The LLC (SIA) “Jysk” essentially considers that the infringed trader and a trader whose shop is arranged on different commercial premises or trading site are under equal circumstances comparable by certain criteria. Whereas, the Cabinet of Ministers considers that such traders are not under equal circumstances comparable by certain criteria. Consequently, the Constitutional Court must first establish which groups of persons are under equal circumstances comparable by certain criteria.

Trading in a shop of a large shopping centre is legally and practically similar to trading in a shop set up on separate premises. However, in the present case, taking into account the goal of the Contested Regulation to limit the spread of Covid-19 infection, in order to ascertain which groups of persons are under equal circumstances comparable by certain criteria, specifically the risk of spread of Covid-19 infection at the relevant trading sites is of decisive importance.

In Paragraph 28 of this Judgement, the Constitutional Court already concluded that such shops which are located in large shopping centres, and which can be cordoned off from the common-use premises of the shopping centre and

provided with a separate external access, did not differ significantly from shops located on separate premises in terms of the risk of spread of Covid-19 infection. Namely, in both the referred to trading sites, flow of visitors takes place through a separate initial entrance, and the visitors cannot use the common-use premises to move between shops. Taking into account the aforementioned, the Constitutional Court recognises that the infringed trader and the trader selling the same goods in a shop arranged on separate premises are under equal circumstances comparable by certain criteria.

The contested norm 1 and the contested norm 2 prohibited the operation of shops in the large shopping centres which were not subject to the exceptions stipulated in these norms, regardless of whether it was possible to provide a separate external access to a particular shop. On the contrary, shops set up at other trading sites, including those set up on separate premises, were allowed to continue their activities in accordance with the provisions of Chapter II<sup>1</sup> of Regulation No. 360, subject to epidemiological safety requirements. Thus, the contested norm 1 and the contested norm 2 provided for differential treatment of the infringed trader compared to a trader selling the same goods in a shop arranged on separate premises.

**Consequently, the contested norm 1 and the contested norm 2 provide for differential treatment of groups of persons who are under the same circumstances comparable by certain criteria.**

**35** differential treatment can be established only by a legal norm adopted in accordance with the procedures laid down in laws and regulations. In order to assess whether the difference in treatment provided for in a legal norm has been established by law, it must be examined whether:

1) the legal norm has been adopted in accordance with the procedures stipulated in laws and regulations;

2) it has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;

3) it has been formulated in sufficiently clear manner for a person to be able to understand the content of the rights and obligations arising therefrom and to predict the consequences of application thereof (*see Paragraph 17 of the Judgement of the Constitutional Court of 2 May 2019 in Case No 2018-14-01*).

In Paragraph 24 of this Judgement, the Constitutional Court already assessed the process of elaboration and issue of the contested norm 1 and the

contested norm 2 and concluded that these norms had been issued in accordance with the procedures stipulated in laws and regulations, proclaimed and made available in accordance with the requirements of laws and regulations and formulated clearly enough for a person to be able to understand the content of rights and obligations arising therefrom and to foresee the consequences of application thereof. The Constitutional Court also did not establish any significant violations of the principle of good law-making during the process of elaboration of the contested norm 1.

**Consequently, the differential treatment established in the contested norm 1 and in the contested norm 2 has been established by a legal norm adopted in accordance with the procedures provided for in laws and regulations.**

**36** The difference in treatment between groups of persons who are under equal circumstances comparable by certain criteria requires a legitimate goal. In the Constitutional Court proceedings, the obligation to specify the legitimate goal lies, first of all, with the institution which has issued the contested enactment (*see, for example, Paragraph 18 of the Judgement of the Constitutional Court of 2 May 2019 in Case No 2018-14-01*). If the differential treatment stipulated in a legal norm does not have a legitimate goal, it is not necessary to assess its compliance with the principle of proportionality (*cf. Paragraph 16 of the Judgement of the Constitutional Court of 16 May 2019 in Case No. 2018-21-01*).

The Cabinet of Ministers essentially points out that, if the Constitutional Court will consider that the contested norm 1 and the contested norm 2 entail differential treatment of groups of persons being under equal and comparable circumstances, this treatment is allegedly justified by the same arguments as provided by the Cabinet of Ministers with regard to compliance of the contested regulation with the first and third sentences of Article 105 of the Constitution. The Cabinet of Ministers has not provided any additional arguments specifically on the possible legitimate goal of the differential treatment caused by the contested norm 1 and the contested norm 2. Consequently, the Constitutional Court is obliged to assess all the circumstances of the case and to ascertain the existence or, on the contrary, absence of such a goal (*cf. ibid., Paragraph 16.1*).

In order to conclude that a difference in treatment provided for in a legal framework between groups of persons who are under equal circumstances comparable by certain criteria is compliant with the principle of legal equality, it

is necessary to establish such objective circumstances and arguments which justify the difference in treatment itself, i.e., to establish the legitimate goal of the difference in treatment and to establish whether the difference in treatment between the groups of persons concerned is proportionate. Arguments concerning the legitimate goal and proportionality of a restriction of another person's fundamental rights established by a legal norm or the expediency of a particular regulation cannot serve as a justification for the differential treatment provided for by the legal norm to groups of persons who are under equal circumstances comparable by certain criteria.

It arises from the record of the extraordinary meeting of the Cabinet of Ministers of 26 March 2021 that the Cabinet of Ministers, when discussing restrictions on the operation of the large shopping centres, decided to allow operation of all the shops located outside the large shopping centres, i.e., shops arranged on separate premises, while retaining the same restrictions on the large shopping centres as were in force during the emergency situation. It is clear from the video recording of this meeting that the Cabinet of Ministers decided to impose such trade restrictions specifically on the large shopping centres because it considered the flow of visitors in the common-use areas of a large shopping centre to be a factor that posed a particularly high risk of spread of Covid-19 infection, as compared to the flow of people in outdoor areas, where the risk of spread of Covid-19 infection was minimal (*see video recording of the extraordinary meeting of the Cabinet of 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). Thus, it is clear from the video recording of this meeting that the Cabinet of Ministers did not at all consider the possibility that certain shops located in the large shopping centres could be provided with separate external access and, accordingly, did not assess whether the contested norm 1 and the contested norm 2 reasonably created a difference in treatment of the traders concerned.

Taking into account the fact that shops located in the large shopping centres which could be provided with a separate external access do not differ significantly in terms of spread of Covid-19 infection from the shops arranged on separate premises with a separate external access, the Constitutional Court does not find that the differential treatment of groups of persons being under equal circumstances comparable by certain criteria provided for in the contested norm 1 and the contested norm 2 is justified by objective facts or arguments. Therefore, there is no legitimate goal for this difference in treatment.

**Consequently, the contested norm 1 and the contested norm 2, insofar as they apply to the infringed trader, do not comply with the first sentence of Article 91 of the Constitution.**

37 The LLC (SIA) “VRPB” and the LLC (SIA) “Domina” also request the Constitutional Court to declare the entire Contested Regulation, insofar as it applies to the owner of a large shopping centre, to be non-compliant with the principle of legal equality contained in the first sentence of Article 91 of the Constitution. The LLC (SIA) “Domina” and the LLC (SIA) “VRPB” essentially maintain that all the owners of the large shopping centres and owners of other trading sites are under equal circumstances comparable by certain criteria. Whereas, the Cabinet of Ministers considers that, from the viewpoint of epidemiological safety, the large shopping centres significantly differ from other trading sites and therefore the aforementioned groups of persons cannot be recognised as comparable.

Both the owner of the large shopping centre and the owner of other commercial premises can lease these premises to traders. Trade in a shop located in a large shopping centre, assessing it in isolated manner, is not significantly different from trade in any other shop arranged on the commercial premises. The economic and legal nature of renting premises in the large shopping centre is also not significantly different from renting commercial premises at other trading sites. However, in the present case, also within the assessment as to whether the owner of a large shopping centre is under equal circumstances comparable by certain criteria to the owner of other commercial premises, the risk of spread of Covid-19 infection inherent to the trading sites in question is of decisive importance.

Trade in a large shopping centre cannot be assessed in isolation from the overall environment of a large shopping centre. Large shopping centres are commercial buildings with the area of at least 7,000 m<sup>2</sup> comprising both trade and service areas and common-use areas. In addition, large shopping centres are characterised by a diverse range of shops, namely, large shopping centres typically offer not only food and everyday goods, but also clothing, footwear, sports goods, electronics, accessories and other specialised shops. From the information available on the websites of the large shopping centres, it follows that, for example, in the large shopping centre “Valleta” operated by the LLC (SIA) “VRPB”, there are eleven shops of different categories (*see the list of shops in the shopping centre “Valleta”, available at: [www.valleta.lv](http://www.valleta.lv)*), and in the large shopping centre “Domina

Shopping” operated by the LLC (SIA) “Domina” – twelve shops of different categories (*see the list of shops in the shopping centre “Domina Shopping”, available at: [www.domina-shopping.lv](http://www.domina-shopping.lv)*). Furthermore, several shops of the same category may be arranged on the premises of a large shopping centre.

However, it should also be taken into account that according to the provisions of Chapter II<sup>1</sup> of Regulation No. 360, indoor trade could only take place if certain epidemiological safety requirements were met, including the requirement to provide each visitor with at least 25 m<sup>2</sup> of publicly accessible floor space, the requirement to comply with the appropriate maximum number of visitors simultaneously allowed at the trading site, and to ensure the organisation and control of the flow of visitors. These epidemiological safety requirements applied to any indoor trading site, including the large shopping centres, where the maximum permissible number of simultaneous visitors was to be determined, in accordance with Paragraph 24<sup>7</sup>, Sub-paragraph 1 of Regulation No. 360, by adding the maximum number of visitors allowed in the shops (trading sites) located on the premises of the large shopping centre.

As the area of a large shopping centre exceeds 7,000 m<sup>2</sup>, even if the maximum number of visitors is complied with, people from different households were able to gather in much larger numbers than on other, smaller commercial premises. Therefore, a large shopping centre cannot be compared to smaller commercial premises in terms of epidemiological safety. However, a large shopping centre in terms of size and therefore epidemiological safety is comparable to a stand-alone shop with a floor area of more than 7,000 m<sup>2</sup> (hereinafter referred to as – a large shop).

An example of a large shop is the “Depo” at 150 Lubānas Street, Riga, with the area of approximately 9,000 m<sup>2</sup> (*see Klūga M. After the closure of large shops, more people attend small ones. 14 November 2020. Available at: [www.lsm.lv](http://www.lsm.lv)*), and shop “IKEA” at Ropaži Municipality, Stopiņi Parish, Dreiliņi, 2 Biķeru Street, with the area of 34,500 m<sup>2</sup> (*see Last financial year's profit of the manager of “IKEA” store in Latvia – 10.37 million euro. 6 February 2020. Available at: [www.lsm.lv](http://www.lsm.lv)*). Both in large shopping centres and large stores, many people from several households could gather at the same time. It does not matter that a large shopping centre usually has a variety of shops offering a wide range of goods, whereas large shops usually specialise mainly in trade in certain categories of goods. Even if the large shopping centre could be attractive to visitors, inter alia, as a place of leisure, the number of visitors to the commercial premises could not

exceed the maximum permissible number of visitors allowed by the norms of Chapter II<sup>1</sup> of Regulation No. 360. Furthermore, it must be taken into account that people's interests and habits tend to vary, therefore a different range of goods on offer per se does not lead to the conclusion that, for leisure purposes, people would be more interested to visit specifically large shopping centres, but not the large stores.

Taking into account the aforementioned, the Constitutional Court recognises that the owner of a large shopping centre is under equal circumstances comparable by certain criteria to the owner of the premises of a large shop. According to the norms of Chapter II<sup>1</sup> of Regulation No. 360, trade could take place on the premises of a large shop subject to the epidemiological safety requirements stipulated in these norms, including requirements with regard to the maximum allowed number of visitors and control of the flow of visitors. On the contrary, under the Contested Regulation, trade could not take place on the premises of a large shopping centre, except for shops subject to the exceptions stipulated in the Contested Regulation.

**Thus, the Contested Regulation provided for differential treatment of groups of persons being under equal circumstances comparable by certain criteria.**

**38** In Paragraphs 24 and 29 of this Judgement, the Constitutional Court already assessed the process of elaboration and issue of the contested norm 1 and the contested norm 2, as well as the contested norm 3 and concluded that these norms were issued in accordance with the procedures stipulated in laws and regulations, they were proclaimed and available in accordance with the requirements of laws and regulations and sufficiently clearly formulated to enable a person to understand the content of rights and obligations arising therefrom and to foresee the consequences of applying them. The Constitutional Court also did not find any significant violations of the principle of good law-making in the process of elaboration of the Contested Regulation. Consequently, this differential treatment provided for in the Contested Regulation has been established by a legal norm adopted in accordance with the procedures stipulated in laws and regulations.

Whereas, in Paragraph 36 of this Judgement, the Constitutional Court already indicated that arguments on the legitimate goal and proportionality of the contested norm itself and the restriction of other fundamental rights of an individual established therein, or on the expediency of the legal regulation could

not be used as a justification for the differential treatment established in a legal norm, and also established that neither from the replies of the Cabinet of Ministers, nor from the materials of elaboration of the contested norm 1 and the contested norm 2 a legitimate goal could be found that could justify the differential treatment established by these norms towards the respective groups of traders being under comparable circumstances. These conclusions are equally applicable also to the difference in treatment caused by the Contested Regulation to the owner of a large shopping centre and the owner of the premises of a large shop.

According to the video recording of the extraordinary meeting of the Cabinet of Ministers on 26 March 2021 that the large shops, specifically, “Depo” were mentioned in that meeting, and it was pointed out that these shops, despite their size, would be able to operate under the planned regulation because they have been arranged on separate premises. The Cabinet of Ministers did not assess the differential treatment of groups of persons being under equal circumstances comparable by certain criteria, which would result from such a regulation. The Cabinet of Ministers only reaffirmed the principle to be contained in the planned regulation that shops with separate external access may resume their operations subject to epidemiological safety requirements, while large shopping centres should remain subject to essentially the same operating restrictions as were in force during the emergency situation (*see video recording of the extraordinary meeting of the Cabinet of Ministers of 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*).

*Dr. med. Ģirts Briģis* pointed out in the extraordinary meeting of the Cabinet of Ministers on 26 March 2021 that shops attended by many people from different households are typically at increased risk of spreading Covid-19 infection, as a person can spread the infection without knowing that he or she is infected. Furthermore, it can be difficult to ensure strict compliance with epidemiological safety requirements at trading sites (*see video recording of the extraordinary meeting of the Cabinet of Ministers of 26 March 2021, available at: [www.mk.gov.lv](http://www.mk.gov.lv)*). According to the Constitutional Court, these findings on the risk of spreading Covid-19 infection apply equally to large shopping centres and large shops, since, given the size of these shops and the maximum number of visitors allowed in them, large shops can also be visited by large numbers of people from different households.

The Constitutional Court has already concluded that the Contested Regulation, insofar as it applies to the owner of a large shopping centre, complies with the first and third sentences of Article 105 of the Constitution, including by

assessing also whether the restriction of the fundamental rights of the owner of a large shopping centre resulting from the Contested Regulation has a legitimate goal and whether this restriction is proportionate. When assessing compliance of the Contested Regulation with the principle of legal equality included in the first sentence of Article 91 of the Constitution, the Constitutional Court examines whether the differential treatment, which the Contested Regulation caused in relation to the groups of persons being under equal circumstances comparable by certain criteria, is justifiable by objective facts and arguments.

Taking into account the fact that there are no significant differences between a large shopping centre and a large shop in terms of the risk of spreading Covid-19 infection, the Constitutional Court does not find objective facts or arguments which would allow to conclude that the differential treatment of the owner of a large shopping centre and the owner of the premises of a large shop caused by the Contested Regulation would have a legitimate goal. Thus, the Constitutional Court recognises that the differential treatment of groups of persons being under equal circumstances and comparable by certain criteria, which is also caused by the Contested Regulation, does not have a legitimate goal.

**Consequently, the Contested Regulation, insofar as it applies to the owner of a large shopping centre, does not comply with the first sentence of Article 91 of the Constitution.**

**39** In accordance with Section 32(3) of the Constitutional Court Law, a legal provision which the Constitutional Court has declared inconsistent with a legal provision of higher legal force shall be deemed invalid from the day of publication of the Constitutional Court judgement, unless otherwise determined by the Constitutional Court.

The Constitutional Court has recognised the contested norm 1 and the contested norm 2, insofar as they apply to the infringed trader, are non-compliant with the first and third sentences of Article 105 and the first sentence of Article 91 of the Constitution, and the entire Contested Regulation, insofar as it applies to the owner of a large shopping centre – non-compliant with the first sentence of Article 91 of the Constitution. The applicants request that the Contested Regulation be declared null and void from the moment of the infringement of their fundamental rights.

The Constitutional Court has recognised that, when deciding on the moment when a legal norm ceases to have effect, in a case initiated upon a constitutional

complaint, it should be taken into account that the task of the court is to prevent, as far as possible, the infringement of the fundamental rights of an individual. At the same time, the court must also ensure that the situation that might arise from the moment when the contested norm loses its force does not lead to new infringements of the fundamental rights established in the Constitution, as well as does not cause significant damage to the interests of the state or society (*see, for example, Paragraph 14 of the Judgement of the Constitutional Court of 2 November 2020 in Case No. 2020-14-01*).

The recognition of the Contested Regulation as null and void from the moment of the infringement of fundamental rights is the only possibility to protect the fundamental rights of the Applicants. Therefore, with regard to the LLC (SIA) “Jysk”, the contested norm 1 and the contested norm 2 must be declared null and void from the moment of the infringement of its fundamental rights. Similarly, with regard to the LLC (SIA) “VRPB” and the LLC (SIA) “Domina”, the Contested Regulation must be recognised as null and void from the moment of the infringement of the fundamental rights of these commercial companies. The date of entry of the contested norm into effect, i.e., 7 April 2021, shall be considered as the moment of occurrence of the infringement of the fundamental rights of the Applicants.

### **The Substantive Part**

On the basis of Sections 30–32 of the Constitutional Court Law, the Constitutional Court

**decided:**

**1 To recognise Paragraph 24<sup>18</sup> of Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” in the wordings effective from 7 April to 19 May 2021, insofar as it applies to a trader whose shop has been arranged on the premises of a large shopping centre and can be provided with a separate external access, and whose shop is not subject to the**

exceptions stipulated in this norm, as being non-compliant with the first sentence of Article 91 and the first and third sentences of Article 105 of the Constitution of the Republic of Latvia.

2 With regard to the LLC (SIA) “Jysk Linnen'n Furniture”, to recognise Paragraph 24<sup>18</sup> of Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” in the wordings effective from 7 April to 19 May 2021, insofar as it applies to a trader whose shop has been arranged on the premises of a large shopping centre and can be provided with a separate external access, and whose shop is not subject to the exceptions stipulated in this norm, as null and void as of 7 April 2021.

3 To recognise Paragraph 24<sup>18</sup> of Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” in the wordings effective from 7 April to 1 June 2021, insofar as it applies to the owner of a large shopping centre, as being compliant with the first and third sentences of Article 105 of the Constitution of the Republic of Latvia.

4 To recognise Paragraph 24<sup>18</sup> of Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” in the wordings effective from 7 April to 1 June 2021, insofar as it applies to the owner of a large shopping centre, as being non-compliant with the first sentence of Article 91 of the Constitution of the Republic of Latvia.

5 With regard to the LLC (SIA) “VRPB” and the LLC (SIA) “EfTEN Domina”, to recognise Paragraph 24<sup>18</sup> of Regulation No. 360 of the Cabinet of Ministers of 9 June 2020 “Epidemiological Safety Measures for the Containment of the Spread of Covid-19 Infection” in the wordings effective from 7 April to 1 June 2021, insofar as it applies to the owner of a large shopping centre, as null and void as of 7 April 2021.

The Judgement is final and not subject to appeal.

The Judgement shall enter into effect as of the date of its publication.

Presiding Judge

Aldis Laviņš