



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

DECISION ON TERMINATION OF THE PROCEEDINGS in Case No. 2021-10-03

In Riga

18 February 2022

The Constitutional Court in the following composition: Chairperson of the Court Session Sanita Osipova, Justices Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, Artūrs Kučs and Anita Rodiņa,

following a constitutional complaint by Aleksandra Jolkina,

on the basis of Section 85 of the Constitution of the Republic of Latvia and Paragraph 3 of Section 16, Paragraph 11 of Section 17(11), Sections 19.² and 28.¹ of the Constitutional Court Law,

on 18 January 2022, in the written procedure reviewed the case

"On Compliance of Paragraph 35³ of the Cabinet of Ministers Regulation of 9 June 2020 No. 360 "Epidemiological Security Measures to Control the Spread of Covid-19 Infection" with the Second Sentence of Section 98 of the Satversme of the Republic of Latvia".

The Constitutional Court determined:

1. On 9 June 2020, the Cabinet of Ministers issued Regulation No. 360 "Epidemiological Precautions to Control the Spread of Covid-19 Infection" (hereinafter - Regulation No. 360), which entered into force on 10 June 2020. In accordance with Paragraph 1 of Regulation No. 360, these Regulations lay down the epidemiological precautions to be taken to limit the spread of Covid-19

infection, including with regard to travel and the organisation of passenger transport.

Cabinet of Ministers Regulation of 7 January 2021 No. 2 "Amendments to Cabinet of Ministers Regulation of 9 June 2020 No. 360 "Epidemiological safety measures to control the spread of Covid-19 infection"" Regulation No. 360 has been supplemented by Paragraph 35³, which sets out the requirements to be observed by a person when travelling to the Republic of Latvia. Regulation 360, Paragraph 35³, has been amended several times, but as of 12 February 2021 it was in force as follows:

"35³ A person may travel to the Republic of Latvia by observing the following requirements:

35³ 1. if the person has undergone a Covid-19 test (molecular biological test for infection by polymerase chain reaction (PCR)) 72 hours before boarding the carrier's vehicle or entering a non-commercial means of transport and the result of this test is negative. The results of the test shall be presented to the carrier before boarding the vehicle or, upon request, to the State Border Guard, the State Police or the Tax and Customs Police of the State Revenue Service, in English, French, German or Russian. If the test results are presented to the carrier before boarding the vehicle, they may also be in the language of the country from which the person is travelling to the Republic of Latvia. If the test results are presented to the State Border Guard, the State Police or the Tax and Customs Police of the State Revenue Service upon entry into the Republic of Latvia from the Republic of Estonia and the Republic of Lithuania, the test results may also be presented in Lithuanian or Estonian;

35³ 2. on production of another medical document certifying that the person is not infectious;

35³ 3. a person, when entering with a vehicle which does not carry out commercial transport, shall confirm the existence of the document referred to in Sub-paragraph 1 or Sub-paragraph 2 of Paragraph 35³ of this Regulation by filling in the confirmation form on the web-site of the information system (covidpass.lv) electronically and, if necessary, present the document referred to in Sub-paragraph

1 or Sub-paragraph 2 of Paragraph 35³ to the State Border Guard or the State Police;

35.³ 4. if the person uses the carrier's vehicle, he shall produce to the carrier the document referred to in Sub-paragraph 1 or Subparagraph 2 of Paragraph 35³ of this Regulation. The international carrier shall visually verify that the person has presented the document referred to in Subparagraph 1 or 2 of Paragraph 35³ of this Regulation. If the document cannot be produced, the carrier shall refuse the person boarding the vehicle."

Cabinet of Ministers Regulation No. 369 of 15 June 2021 "Amendments to Cabinet of Ministers Regulation No. 360 of 9 June 2020 "Epidemiological safety measures to control the spread of Covid-19 infection"" Paragraph 35³ of Regulation No. 360 has been deleted and has lapsed.

2. The Applicant – Aleksandra Jolkina (hereinafter - "the Applicant"), considers that Paragraph 35³ of Regulation No. 360 in the wording in force from 12 February 2021 to 15 June 2021 (hereinafter - "the Contested norm") does not comply with the second sentence of Section 98 of the Satversme of the Republic of Latvia (hereinafter - "the Satversme").

The Applicant is a Latvian citizen who has been residing in Germany since 2015 and regularly visits Latvia. She has been in Germany continuously since the end of October 2020 and plans to visit Latvia in the second half of January or February 2021. However, by the contested norm the Applicant is prohibited to enter Latvia without having undergone the Covid-19 test (molecular biological test of infection with polymerase chain reaction (PCR); hereinafter also - "Covid-19 test"), which she is unable to undergo due to the high costs of such a test. Thus, the Applicant's right to return to Latvia, included in the second sentence of Section 98 of the Satversme, has been restricted.

The restriction of the fundamental right laid down in the contested norm is not laid down by a legal norm which could be regarded as sufficiently clear. The restriction of fundamental rights established by the contested norm has a legitimate

aim - protection of the rights of others - but the restriction of fundamental rights is not proportionate.

The requirement to take a Covid-19 test before entering Latvia is not justified, as the main source of spread of the Covid-19 virus is the local population. In addition the legitimate aim of such a restriction on fundamental rights can be allegedly achieved by means less restrictive on the individual's rights.

3. The institution that issued the contested act - the Cabinet of Ministers

- holds that the contested norm complies with the second sentence of Section 98 of the Satversme, but points out that it has already lost its validity and therefore the legal proceedings in the present case should be terminated.

The contested norm is sufficiently clear, therefore the restriction of the fundamental right established by it is established by law. This has a legitimate aim - the protection of the rights of others. Until the adoption of the contested norm, Regulation No. 360 provided for the prohibition of international passenger transport in situations where there was a serious risk to public health. Restrictions on transport to different countries at that time depended on Covid-19 morbidity statistics and could change on a weekly basis, making it impossible for both carriers and passengers to predict and plan international passenger transport. The contested norm was adopted in order to limit the spread of the Covid-19 infection in Latvia and at the same time to prevent unpredictability in the field of international passenger transport. Moreover, in accordance with Paragraph 35⁵ of Regulation No. 360, Latvian nationals and permanent residents of the European Union with a residence permit in Latvia who tested positive in the Covid-19 test were not restricted from entering the territory of Latvia when travelling in a non-commercial means of transport.

In the context of a Covid-19 pandemic, the public benefit of epidemiological precautions, including the obligation for migrants to undergo a Covid-19 test and to produce the result or other medical document certifying that they are not infectious, outweighs any infringement of their rights. This will ensure that the spread of the

Covid-19 infection can be controlled and that the right to health and life of others is protected.

4. The invited person - Saeima - holds that the contested provision complies with Section 98 of the Satversme.

The contested norm restricts the right included in the second sentence of Section 98 of the Satversme. This restriction of fundamental rights is established by law, since the contested norm is formulated with sufficient clarity and has been issued in accordance with a statutory mandate. This restriction of fundamental rights has a legitimate aim - the protection of the rights of others - and complies with the principle of proportionality. In the European Union, the Covid-19 test provided for in the contested provision is considered to be the "gold standard".

5. The invited person - the Ombudsman - states that the contested provision complies with Section 98 of the Satversme.

The contested norm does not deprive Latvian nationals of the right to enter Latvia, but only establishes additional requirements that must be fulfilled in order for such entry to actually be possible. The requirement to undergo the Covid-19 test can therefore be seen in the context of the right to return to one's own country.

The restriction of fundamental rights contained in the contested provision is established by law and it has a legitimate aim, i.e. protection of public security and protection of the rights of others. In particular, the restriction was imposed in order to prevent the spread of Covid-19 infection in Latvia. The restriction is aimed at achieving those objectives and cannot be achieved by less restrictive means. For example, conducting a test at the airport upon arrival in Latvia is not equally effective compared to ensuring that the test is conducted in advance.

The obligation to take a test before entering Latvia is a special measure used to prevent the spread of a worldwide infection. This is not a permanent requirement, but a response to the health security situation in Latvia and abroad. This requirement imposes certain burdens on the individual, but reduces the risk of spreading Covid-19 infection and has important public health benefits. If, in a particular

situation, the administration of the test would impose a disproportionate burden on a person, the person may request an exception. Thereby the benefit to society from the restriction contained in the contested provision outweighs the harm done to the rights of the individual.

6. The invited person - the Centre for Disease Prevention and Control - is of the opinion that the obligation to carry out the Covid-19 test provided for in the contested norm reduces the risk of the spread of Covid-19.

The obligation to take the Covid-19 test before entering Latvia restricts the entry of infected persons into Latvia, since if the test is positive, the person must comply with quarantine measures and is not allowed to leave the foreign country concerned. This requirement also helps to prevent the risk of infection for passengers who might share a vehicle with an infected person.

7. The invited person - State Border Guard - points out that failure to comply with the requirements laid down in the contested norm could be a ground for refusal of entry to the Republic of Latvia.

During the period of validity of the contested norm, the State Border Guard Service carried out document checks of persons entering the territory of the Republic of Latvia at border crossing points, including border crossing points at airports and ports, as well as in the framework of immigration control at internal land borders. The State Border Guard assessed the individual circumstances of the migrants, therefore, in not all cases the absence of the documents provided for in the contested norm was in itself a reason to refuse a person entry to Latvia.

8. The invited person - the State Police - draws attention to the fact that between 15 January 2021 and 15 June 2021, 212 administrative offence proceedings were initiated for non-compliance with the requirements set out in the contested norm. Decisions taken in a country on epidemiological safety need to be evaluated in the context of many factors, including the rapid deterioration of the epidemiological situation and the effectiveness of epidemiological safety measures.

9. The invited person - Head of the Department of Public Health and Epidemiology, Riga Stradins University, Professor *Dr. med. Ģirts Briģis* - believes that the requirements and restrictions contained in Regulation No. 360 were in line with the world's leading scientific knowledge and the current epidemiological safety situation.

One of the most important measures to control Covid-19 infection is to identify and isolate the infected person in time, thus preventing the uncontrolled spread of the disease. International travel carries a particular risk of increasing the spread of Covid-19 infection due to the additional exposure to other people. In addition, the incidence rates vary from country to country and in some countries SARS-Cov-2 mutant variants are spreading, which poses an additional risk of global spread of these new variants when unrecognised vectors travel. A negative Covid-19 test result as a prerequisite for entry into Latvia significantly reduces the risk of transmission and the overall public health risk.

The best way to reduce the risk of infection is to test both before leaving the country and immediately after arriving in Latvia. However, as the overall prevalence of the disease is decreasing, there is no need for an additional test after arrival in Latvia. If the test is carried out on a first-come, first-served basis, rather than at the border or in a foreign country just before travel, the infected person could infect many healthy people before a positive test result is available.

10. Invited person - Associate Professor, Faculty of Medicine, University of Latvia *Dr. iur. Solvita Olsena* - does not consider that the contested norm would be contrary to the second sentence of Section 98 of the Satversme.

Taking into account the data on the prevalence of Covid-19 infection and the hospital workload, it must be recognised that the legitimate aim of the restriction of the fundamental right contained in the contested norm - the protection of the rights of others by reducing the spread of Covid-19 and protecting public health - is legitimate. It is important to take into account that the contested norm was adopted

during the second state of emergency, when the prevalence of Covid-19 in Latvia was very high and public health was seriously endangered.

At the time of the adoption of the contested norm, the requirement for travellers to produce a negative Covid-19 test result was scientifically justified and necessary. This requirement has ensured that people who tested positive for the virus, and who were therefore dangerous carriers, did not end up on public transport. Moreover, it is important to ensure that several epidemiological safety measures are implemented at the same time, e.g. the testing obligation is effective in combination with the obligation to use a mouth and nose covering.

11. Invited guest - Altenholz / Reinfeld University of Applied Sciences in Kiel Professor *Dr. iur.* Christoph Johann Ulrick Schewe - considers that the contested norm makes it more difficult for citizens of the European Union to travel to Latvia and may therefore affect the freedom of movement of citizens of the European Union guaranteed by Section 21(1) of the Treaty on the Functioning of the European Union.

The restriction laid down by the contested provision is justified in so far as it is aimed at protecting public health and is in accordance with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC ('Directive 2004/38/EC'). In particular, Covid-19 is a disease recognised by the World Health Organisation as having epidemiological potential and may therefore give rise to restrictions on free movement within the meaning of Directive 2004/38/EC. The Council of the European Union has also found the obligation to take the Covid-19 test before travelling to another country to be proportionate.

Member States have a certain degree of discretion in emergency situations. Moreover, the protection of public health is not one of the areas which fall within the competence of the European Union. Member States may therefore oblige a

person to take the Covid-19 test and are not obliged to provide such tests free of charge.

12. Invited person - LL.M. Kristīne Gailīte - points out that the contested norm essentially affects the right to free movement within the European Union.

To move freely between Member States, it is sufficient to present a valid passport or identity card stating your nationality. EU citizens can also invoke their right to free movement against the Member State of which they are nationals, for example when they are on the territory of another Member State. However, the right to free movement is ineffective if the Member State's legislation prevents a person from exercising his right to free movement. The preconditions for entry into Latvia laid down in the contested norm - the requirement to present a negative result of the Covid-19 test, as well as the requirement to pay for the test oneself - are also to be regarded as a restriction of a person's right.

In the present case, the State has defined the justification for the restriction as the aim to limit the spread of Covid-19 infection in Latvia and to minimise the import of Covid-19 infection into Latvia, as well as to reduce the epidemiological safety risks associated with international passenger transport. Such a justification for a restriction on the right to freedom of movement is permissible.

The requirement of a negative Covid-19 test result before entry is a frequent and widely used measure in a large number of Member States of the European Union and is in itself clearly appropriate to achieve the legitimate aim pursued. The Council of the European Union has also indicated that Member States may impose such a requirement on travellers in a situation of high epidemiological safety risk, in order to coordinate measures between Member States. However, the Latvian State has imposed such a requirement in general - irrespective of the prevalence of Covid-19 in the country or area of departure and the mode of transport used by the person. Thus, the scope of the restriction on freedom of movement laid down by the contested norm is too wide. Moreover, in adopting the contested provision, the State failed to assess the availability and cost of Covid-19 tests in the country of

departure. Thus, in this specific situation there may be other means that are less restrictive of the rights of a person.

The Constitutional Court determined:

13. On the basis of Section 29 Paragraph first Point 2 of the Constitutional Court Law, the Cabinet of Ministers requests to terminate legal proceedings in the case, as the contested norm has become invalid.

13.1. If arguments have been raised in the case which could be grounds for termination of legal proceedings, they should be assessed first of all (*see, for example, Paragraph 12 of the 27 June 2016 Constitutional Court Judgment in Case No. 2015-22-01*). Section 29 Paragraph first Point 2 of the Constitutional Court Law provides that proceedings in a case may be terminated until a judgement is rendered if the contested legal norm has become invalid. The aforementioned norm of the Constitutional Court Law is aimed at ensuring the economy of the Constitutional Court proceedings (*see, for example, Paragraph 5 of the Decision of the Constitutional Court of 18 April 2016 on termination of proceedings in Case No. 2015-15-01*).

However, the law provides for the possibility to terminate proceedings, but not the obligation to do so. In a case, the loss of force of the contested norm in itself is not always a ground for termination of legal proceedings (*see, for example, Paragraph 8 of the Decision of the Constitutional Court of 29 March 2011 on termination of legal proceedings in Case No. 2010-68-01*). Therefore, the Constitutional Court must assess whether there are any considerations which indicate the necessity to continue legal proceedings in the case (*see Paragraph 6 of the Constitutional Court's judgment of 11 January 2011 in Case No. 2010-40-03*).

Thus, in order to decide on the discontinuance of proceedings on the basis of Section 29 Paragraph first Point 2 of the Constitutional Court Law, it is necessary to establish in the present case: 1) whether the contested norm has become invalid and 2) whether there are no circumstances that require the continuation of the

proceedings (*cf.*, for example, Paragraph 5 of the Decision of the Constitutional Court of 3 May 2017 on Termination of Proceedings in Case No. 2016-20-01).

13.2. The case under examination has been initiated on compliance of the contested norm with the second sentence of Section 98 of the Satversme. The notion "contested norm" within the meaning of Section 29 Paragraph first Point 2 of the Constitutional Court Law shall not be understood formally, i.e., only as a text included in a normative act. The contested norm is a certain legal regulation which the applicant considers to be incompatible with a legal norm of higher legal force (*see Paragraph 9 of the Constitutional Court's judgment of 16 May 2019 in Case No. 2018-21-01*).

If the issuer of a legal norm, after initiating a case before the Constitutional Court, has amended the regulation included in the contested norm or has completely excluded it from a normative act, the Constitutional Court must establish the extent of the changes made in order to conclude whether the content of the legal norm has changed in substance (*cf. Paragraph 7 of the Decision of the Constitutional Court of 11 March 2015 on termination of proceedings in Case No. 2014-33-01 and Paragraph 6 of the Decision of 20 June 2018 on termination of proceedings in Case No. 2017-19-01*).

According to the contested norm, a person could enter Latvia if 72 hours prior to entry he/she had undergone the Covid-19 test or presented another medical document confirming that he/she was not infectious. In addition, when entering a vehicle of an international passenger carrier, the Covid-19 test carried out 72 hours before boarding the vehicle must be negative.

However, the contested norm has been deleted and has become invalid by the Cabinet of Ministers Regulation No. 369 of 15 June 2021 "Amendments to Cabinet of Ministers Regulation No. 360 of 9 June 2020 "Epidemiological Safety Measures to Control the Spread of Covid-19 Infection"". In addition, the above amendments have supplemented Regulation No. 360 with paragraph 38³⁹, which stipulates that entry into Latvia in a vehicle of an international passenger carrier is possible not only if the person has undergone a Covid-19 test for SARS-CoV-2 RNA or a SARS-CoV-2 antigen test and the result is negative or the person has

contracted Covid-19, but also if the person has been vaccinated against Covid-19. Thus, the legislator has supplemented the legal regulation included in the contested norm with a new, alternative feature of the legal composition, which refers to situations when a person has been vaccinated against Covid-19, and thus has regulated entry into Latvia in the conditions of the Covid-19 pandemic in a different way.

Consequently, in the present case, the contested norm has lapsed.

13.3. The present case was initiated on the basis of a constitutional complaint lodged by the Applicant. The Constitutional Court has recognised that a constitutional complaint is, first of all, a means which serves to protect the fundamental rights of the applicant of the specific constitutional complaint (*see Paragraph 20.2 of the Judgment of the Constitutional Court of 16 June 2006 in Case No. 2005-13-0106*). The fact that the contested norm, during the pendency of the case, no longer has adverse effects on the applicant due to its invalidity is not in itself a sufficient ground to recognise that there has been no infringement of his fundamental rights. In such a case, if at some point in the past the applicant came within the scope of the contested norm and the contested norm had adverse consequences for him, it may still be necessary to continue the proceedings in the case. It must be ascertained on a case-by-case basis whether there are any considerations which make it necessary to assess the constitutionality of the contested norm in the light of the circumstances of the past. This may be necessary, for example, if the assessment of the constitutionality of the contested norm is essential for the protection of the applicant's rights after the conclusion of the constitutional proceedings. In such a case, there would be no grounds to terminate the proceedings and the circumstances that existed at the given time in the past would be assessed (*cf. Paragraph 5 of the Decision of the Constitutional Court of 20 June 2018 on Termination of Proceedings in Case No. 2017-19-01 and Paragraph 11.2.2 of the Decision of 10 December 2021 on Termination of Proceedings in Case No. 2021-11-01*). Similarly, the necessity to continue the proceedings may be indicated by a significant threat to the interests of society or individual persons caused by the contested norm, the constitutional significance of

the legal issue to be examined in the given case and whether the loss of the contested norm's force has resolved this issue (*cf. see Paragraph 9 of the judgment of the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Paragraph 16.2 of the decision of 8 June 2012 on termination of proceedings in Case No. 2011-18-01 and Paragraph 10.2 of the decision of 3 April 2014 on termination of proceedings in Case No. 2013-11-01*).

Taking into account the materials of the case under examination, the proceedings before the Constitutional Court are the only way to provide the Applicant with legal protection in relation to the alleged infringement of the Applicant's fundamental rights. Moreover, the case at hand relates to citizenship - a person's legal link with Latvia. One of the manifestations of this link is the right of a Latvian citizen to return to Latvia, which is a fundamental issue of constitutional law. Moreover, in a situation where the Covid-19 pandemic continued even after the contested norm had already expired, the issue of imposing restrictions on the entry of citizens into Latvia remains relevant.

Consequently, changes in the legal regulation included in the contested norm are not in themselves sufficient grounds to terminate proceedings in the case under examination in accordance with Section 29 Paragraph first Point 2 of the Constitutional Court Law.

14. The Applicant requests the Constitutional Court to declare the contested norm incompatible with the second sentence of Section 98 of the Satversme.

14.1. Second sentence of Section 98 of the Satversme: "Anyone who holds a Latvian passport is under the protection of the state outside Latvia and has the right to return freely to Latvia."

The Constitutional Court has concluded that the right of a person to freely return to Latvia is related to the legal connection of that person with Latvia. The circle of persons who have such rights includes also citizens of Latvia (*see Paragraphs 18 and 19 of the Constitutional Court's judgment of 7 March 2005 in Case No. 2004-15-0106 and Paragraph 9.1 of the decision of 15 June 2011 on termination of proceedings in Case No. 2010-64-01*).

Latvian citizens as whole, or the nation, is one of the constitutive elements of the Latvian state in international law and constitutes Latvia's state identity (*see also: Constitutional Law Commission. Views on the constitutional foundations of the Latvian state and the inviolable core of the Satversme. 17 September 2012, Sections 79 and 208*). According to the first part of Section 1¹ of the Citizenship Law, Latvian citizenship is a person's stable legal link with the Latvian State. According to the second paragraph of the said Article, the content of Latvian citizenship consists of a set of rights and obligations interrelated between the citizen and the State. Similarly, it is clear from the jurisprudence and legal doctrine of the International Court of Justice that nationality is a legal bond of loyalty between a person and a State which gives rise to reciprocal rights and obligations (*see the judgment of the International Court of Justice in Nottebohm (Liechtenstein v. Guatemala) of 6 April 1955; see also: Crawford J. Brownlie's Principles of Public International Law. 9th edition. Oxford: Oxford University, 2019, p. 499; Kučš A. Restoration of the Latvian Citizens' Collective. Books..: Jundzis T. (ed.) The Doctrine of Continuity in the Context of Latvian History. Riga: Baltic Centre for Strategic Studies, Latvian Academy of Sciences, 2017, pp. 312-315.*). It is also clear from the case-law of the European Court of Human Rights that a relationship of loyalty and solidarity exists between a State and its national (*see, for example, Paragraph 45 of the judgment of the European Court of Human Rights of 25 June 2020 in Ghoumid and Others v. France, Application No. 52273/16 etc.*).

The Latvian citizens' collectivity is a political and legal community in which the Latvian nation, together with the minorities living within its ethnographic borders, which have now become the borders of the Latvian state, voluntarily united (*see: Dischler K. The legal content of the principle of self-determination of peoples. Riga: University of Latvia, 1932, pp. 119-120.*). It is tied to the territory of Latvia, because the self-determination and will of the citizens or people of Latvia, as reflected in the fundamental norm of Latvia, to live in a democratic state governed by the rule of law, can only be exercised in a specific geographical territory. Only in this territory - the territory of Latvia - can Latvian citizens live, fully enjoying the rights enshrined in the Satversme. However, as a result of the occupation by the

Union of Soviet Socialist Republics, the possibilities of the citizens of Latvia as a whole to implement the will of the people as reflected in the fundamental norm of Latvia were unlawfully restricted, inter alia, because a number of Latvian citizens were deported (*see the Declaration of the Saeima of 22 August 1996 on the Occupation of Latvia; see also Paragraph 33.2 of the Constitutional Court judgment of 29 November 2007 in Case No. 2007-10-0102*). The deportations were intended to deport the inhabitants of Latvia for life, preventing them from returning to their previous place of residence - Latvia (*for more information see: Spridzāns B. On Latvia's blackest day. Latvijas Vēstnesis, 2162; Bleiere D. Deportation of 14 June 1941 in Latvia. Available: www.enciklopedija.lv; Bleiere D. Deportation of 25 March 1949 in Latvia. Available: www.enciklopedija.lv*). Moreover, during the occupation of Latvia, the right to leave one's country was not recognised, and departure was possible only with special permission from the state. The main aim of this procedure was to prevent the emigration of persons to Western European countries (*see: Nikultseva I. Article 98. Books: Balodis R. (ed.) Commentaries on the Constitution of the Republic of Latvia. Chapter VIII. Fundamental human rights. Latvijas Vēstnesis: Rīga, 2011, p. 291*). Due to the historical circumstances outlined above, the attachment of Latvian citizens to the territory of Latvia is of particular importance, which is why the right to return to Latvia was included in legislation of constitutional significance soon after the restoration of the country's independence. In particular, the second part of Section 10 of the Law of 10 December 1991 on the Rights and Duties of Man and Citizen stipulated that citizens had the right to leave and return to Latvia freely.

Nowadays, the right to freely return to Latvia is exercised, inter alia, when a person has previously exercised the right to leave Latvia included in the first sentence of Section 98 of the Satversme. Both the right to leave Latvia freely and the right to return to Latvia are closely linked to the constitutional axiom contained in the first sentence of the Introduction to the Satversme: Latvia, as a democratic state governed by the rule of law, is based on human dignity and freedom. A Latvian citizen, in the exercise of his or her self-determination, may choose whether to reside in Latvia or to leave Latvia for a foreign country and, if he or she has left

Latvia, whether and when to return to Latvia. Determining one's location and place of residence is an expression of personal freedom and self-determination. However, it is necessary to distinguish between a person's right to return to Latvia and a person's willingness and ability to use a particular mode of transport for that purpose, and to bear in mind that no one has a subjective right to, for example, an air flight (*cf. Līce K. Human rights are not egocentrism, the state is not the Happy Bear. Jurista Vārds, 16.02.2021, No 7, pp. 24-26.*). The Latvian state is obliged to protect its citizens even if they are outside its territory. This protection consists, inter alia, in the fact that the state may not create insurmountable obstacles for a Latvian citizen that make it impossible for him or her to return to Latvia. That is, return to Latvia is free, unless prevented by insurmountable obstacles created by the state. There are also different ways for a Latvian national to return to Latvia: by crossing a land border or entering via a port, airport, train station or other means.

14.2. Section 89 of the Satversme provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. It follows from this Article that the aim of the legislator is to achieve harmony between the human rights norms enshrined in the Constitution and the norms of international law. By specifying the norms of the Constitution in conjunction with the norms enshrined in international human rights instruments, it is necessary to ensure harmony of these norms, preventing that the fundamental rights included in the Constitution are reduced or restricted (*cf. Judgment of the Constitutional Court, Paragraph 15.1, and Judgment of 5 December 2019 in Case No. 2018-18-01*).

Section 13 Point 2 of the Universal Declaration of Human Rights states that everyone has the right to leave any country, including his own, and to return to his own country. Similarly, under Section 12 Point 4 of the International Covenant on Civil and Political Rights, no one may be arbitrarily deprived of the right to enter his country.

Section 3 Point 2 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - "the Convention") provides that no one shall be denied the right to enter the territory of the State of

which he is a national. The case-law of the European Court of Human Rights does not specify this rule of law.

As recognised by the European Court of Human Rights, the provisions of the Human Rights Convention must be interpreted in accordance with the relevant rules of public international law, in particular the principles of interpretation contained in Articles 31, 32 and 33 of the Vienna Convention on the Law of Treaties ("Vienna Convention") (*see, for example, the judgment of the Grand Chamber of the European Court of Human Rights of 25 June 2020 in the case "S. M. v. Croatia", application No 60561/14, Paragraph 287*). In this respect, the European Court of Human Rights has specifically emphasised that the provisions of the Human Rights Convention must be interpreted in such a way that the rights contained therein are practical and effective and not theoretical and illusory (*see Paragraphs 65 and 66 of the judgment of the Grand Chamber of the European Court of Human Rights of 12 November 2008 in Demir and Baykara v. Turkey, application No. 24503/97*).

Section 31 Paragraph first of the Vienna Convention provides that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty as a whole and in conformity with its object and purpose. In addition, under the second and third Paragraphs of that Section, account must be taken of the documents drawn up and accepted by the parties to the treaty, including the agreement on the content of the treaty, the practice of applying the treaty in question established by the agreement of the parties as to its interpretation, and any other rules of international law applicable between the parties to the treaty in question. Section 32 of the Vienna Convention, on the other hand, allows for additional interpretative techniques, including reference to the materials used in drafting the contract and the circumstances in which it was concluded.

The wording "shall not be denied" in Section 3 Paragraph 2 of Protocol 4 to the Human Rights Convention indicates the unconditional nature of this right. It is also clear from the rest of the text of the Human Rights Convention that, where the rights it contains can be limited, the criteria for determining such limitation are contained in the text of the Human Rights Convention itself. However, Section 3 of

Protocol 4 to the Human Rights Convention does not set out criteria for limiting the rights it contains.

The Constitutional Court also notes that the Court of Justice of the European Union has recognised that the principle of international law, which is reaffirmed in Section 3 of Protocol 4 to the Convention on Human Rights, does not allow Member States to prohibit their nationals from entering their territory and residing there in any capacity, and the same principle also prohibits Member States from making the residence of their nationals in their territory subject to conditions (*see, for example, the Court of Justice of the European Union in its judgment in Case C-59/89, Paragraph 29 of the judgment of the Court of Justice of the European Union of 5 May 2011 in Case C-434/09 "McCarthy"*). Similarly, legal doctrine holds that these rights are absolute (*cf. Saliba A. T., Do Valle M. F. V. Stranded at the border: an analysis of the legality of international travel restrictions adopted by states in the Covid-19 pandemic in light of the right to return to one's country. Available at: wilj.las.wisc.edu*). The Constitutional Court should take this into account when specifying the right of citizens to freely return to Latvia included in the second sentence of Section 98 of the Satversme.

14.3. Section 116 of the Satversme provides that a person's rights under Section 98 of the Satversme may be restricted. However, Section 116 of the Satversme should be specified, taking into account the nature and place of the constitutional norms specified therein in the constitutional system and ensuring harmony with the human rights norms enshrined in international treaties binding on Latvia. In the present case, this means that the reference in Section 116 of the Satversme to the possibility to restrict the rights contained in Section 98 of the Satversme does not apply to the right of a citizen to freely return to Latvia contained in the second sentence of Section 98 of the Satversme, as this could lead to the fact that the actual attachment of the totality of Latvian citizens - the constitutive element of the Latvian State - to the territory of Latvia and the implementation of the sovereign will to live in a democratic State governed by the rule of law, as enshrined in the fundamental norm of Latvia, are undermined. Moreover, under

Section 3 Paragraph 2 of Protocol 4 to the Human Rights Convention, these rights cannot be denied, i.e. they are absolute.

Consequently, the second sentence of Section 98 of the Satversme protects, inter alia, the absolute right of a Latvian citizen to return freely to Latvia and this right may not be restricted.

15. In order to establish whether the contested norm restricts the right included in the second sentence of Section 98 of the Satversme, the Constitutional Court must examine whether:

1) a person is a subject of the rights included in the second sentence of Section 98 of the Satversme;

2) the contested norm denies a person the possibility to freely return to Latvia.

16. There is no dispute in the case and the Constitutional Court has no doubts that the Applicant is a citizen of Latvia, i.e., the Applicant is a subject of the rights included in the second sentence of Section 98 of the Satversme. Consequently, the Constitutional Court must examine whether the contested norm actually denied the Applicant the possibility to freely return to Latvia.

According to the contested norm, the Applicant could enter Latvia if she had undergone the Covid-19 test 72 hours prior to her entry or if she was able to present another medical document confirming that she was not infectious. The person had to have tested negative for Covid-19 when entering in the vehicle of an international passenger carrier.

The Applicant attributes the possible infringement of her fundamental right to freely return to Latvia, included in Section 98 of the Satversme, to the fact that at the time when the contested norm was in force she was in Germany and wished to travel to Latvia in a vehicle of an international passenger air carrier, but the contested norm obliged the Applicant to present a negative Covid-19 test result to the international carrier. The Constitutional Court notes that during the period of its validity - from 12 February 2021 to 15 June 2021 - the contested norm was only a

part of the legal regulation on the right of a citizen to return to Latvia during the pandemic of Covid-19. In accordance with the principle of a rational legislator, the legislator adopts mutually harmonised legal norms that operate harmoniously within the framework of the entire legal system (*see, for example, Paragraph 26.4 of the Judgment of the Constitutional Court in Case No. 2019-37-0103 of 28 September 2020*). The contested norm should also be considered in a systemic manner and in conjunction with the rest of the legal framework adopted during the pandemic of Covid-19.

In accordance with Paragraph 35⁵ of Regulation No. 360, Latvian citizens who entered Latvia in a non-commercial vehicle and tested positive for Covid-19 were not restricted from entering the territory of Latvia. Moreover, Paragraph 35⁴ of Regulation No. 360 provided for exceptions to the obligation provided for in the contested norm, including that according to Paragraph 35⁴ (8) of the Regulation, this obligation did not apply to such categories of persons in respect of whom the State Border Guard established that their entry into Latvia complies with international legal norms, the interests of the Latvian state or is related to urgent circumstances, force majeure or humanitarian considerations. It follows from the materials of the case file that the State Border Guard, when applying the contested norm, has assessed the individual situation of each migrant (*see the opinion of the State Border Guard in volume 2 of the materials of the case, no. p. 105*). The Constitutional Court also takes into account that until the date of entry into force of the contested norm, Regulation No. 360 provided for even stricter restrictions on international passenger transport. In particular, Paragraph 35 of Regulation 360 generally prohibited international passenger transport via airports, ports, buses and rail from/to countries listed on the website of the Centre for Disease Prevention and Control as having a prevalence of Covid-19 infection that could pose a serious risk to public health. The contested norm relaxed this even stricter entry regime (*see also the Initial Impact Assessment Report (Annotation) of the Draft Cabinet Regulation "Amendments to the Cabinet Regulation of 9 June 2020 No. 360 "Epidemiological Security Measures to Control the Spread of Covid-19 Infection" in Volume 1 of the case materials*). p. 87). The Constitutional Court also takes into

account that according to Section 1, Section 2 Paragraph 1 and Section 6 of the Law on Consular Assistance and Consular Services, consular assistance may be provided to Latvian citizens who are outside Latvia in emergency situations. Pursuant to the Paragraph first of Section 12 of the aforementioned Law and Sub-paragraphs 4.1 and 4.2 of the Cabinet of Ministers Regulation No. 630 of 9 October 2018 "Procedure for Granting and Reimbursing Material Assistance", Latvian citizens may also be granted material assistance to cover, inter alia, travel expenses from the person's place of residence to the country of destination, as well as expenses related to departure formalities.

In view of the above, it must be recognised that the obligation laid down in the contested norm for a person to present a negative Covid-19 test result or another document certifying that the person is not infectious to an international passenger air carrier before entering Latvia may have caused the person some hardship, as it prevented him from entering Latvia in the desired manner. However, this does not constitute an insurmountable obstacle - Latvia has not banned the entry of its citizens and has not closed its borders. Thus, it cannot be established that the right of the Applicant to freely return to Latvia, contained in the second sentence of Section 98 of the Satversme, has been infringed.

Accordingly, there is no longer any need to adjudicate in the present case.

Taking into account the above, and on the basis of Section 29 Paragraph first Point 6 of the Constitutional Court Law, the Constitutional Court

decided:

to terminate legal proceedings in Case No. 2021-10-03 "On Compliance of Paragraph 35.³ of the Cabinet of Ministers Regulation of 9 June 2020 No. 360 "Epidemiological Security Measures to Limit the Spread of Covid-19 Infection" with the Second Sentence of Section 98 of the Satversme of the Republic of Latvia".

The decision is not subject to appeal.

Chairperson of the Court session

Aldis Laviņš