



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

on behalf of the Republic of Latvia

Riga, 11 December 2020

in Case No 2020-26-0106

The Constitutional Court composed of the President of the Court Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis and Artūrs Kučs,

following the constitutional challenges filed by *SIA OPTIBET*, *SIA Alfor*, *SIA Admirāļu klubs*, *SIA Latsson Licencing* and *SIA FURORS*,

pursuant to Article 85 of the Constitution of the Republic of Latvia and Sections 16(1) and 16(6), Section 17(1)(11), Sections 19² and 28¹ of the Constitutional Court Law

at the court hearing held on 11 November 2020 examined the following case in a written procedure

‘On compliance of Articles 8 and 9 of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution of the Republic of Latvia and compliance of Article 9 of this law with Article 49 of the Treaty on the Functioning of the European Union’.

Statement of Facts

1. On 11 March 2020, the World Health Organization announced that the global Covid-19 outbreak caused by a coronavirus achieved the level of pandemic.

In order to restrict the spread of the virus causing Covid-19, on 12 March 2020 the Cabinet issued Order No 103 declaring an emergency situation (hereinafter – Order No 103), which declared an emergency situation across Latvia effective from the moment that the decision was adopted (i.e. 12 March 2020) until 14 April. Cabinet Order No 161 of 7 April 2020 amending Cabinet order No 103 of 12 March 2020 declaring an emergency situation extended the emergency situation to 12 May 2020, whereas Order No 254 of 7 May 2020 amending Cabinet Order No 103 of 12 March 2020 declaring an emergency situation extended it to 9 June 2020.

At an extraordinary meeting of 20 March 2020, *the Saeima* adopted the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 (hereinafter – the Covid-19 Law) that came into force on 22 March 2020. Article 8 of this law contains the following provision: ‘during the emergency situation related to the spread of Covid-19 organising gambling and lotteries is prohibited, except for interactive gambling, numerical lotteries, and instant lotteries.’ Pursuant to Article 9 of the Law, ‘for the duration of operation of this Law the Lotteries and Gambling Supervisory Inspection shall suspend all the licences to operate gambling both in physical locations where gambling is organised (licence of a casino, license of a gambling hall, licence of a bingo hall) and in the interactive environment and (or) using the intermediation of electronic communications services’.

The Covid-19 Law was repealed on 10 June 2020.

2. The Constitutional Court initiated a number of cases in respect of compliance of Articles 8 and 9 of the Covid-19 Law (hereinafter – the contested provisions) with the Constitution. In order to expedite more thorough proceedings

under these cases, they were joined in a single case pursuant to Section 22(6) of the Constitutional Court Law.

Joined Case No 2020-26-0106 was assigned the title ‘On compliance of Articles 8 and 9 of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution of the Republic of Latvia and compliance of Article 9 of this law with Article 49 of the Treaty on the Functioning of the European Union’.

3. The applicants (hereinafter also the Applicants) request that Articles 8 and 9 of the Covid-19 Law be declared non-compliant with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution (*Satversme*) of the Republic of Latvia (hereinafter – the Constitution) and that Article 9 of the law be declared non-compliant with Article 49 of the Treaty on the Functioning of the European Union.

3.1. Applicants – SIA OPTIBET, SIA Latsson Licensing and SIA FURORS – request an assessment of compliance of Article 9 of the Covid-19 Law, insofar as it requires the Lotteries and Gambling Supervisory Inspection (hereinafter – the Inspection) to suspend licences to operate gambling in the interactive environment and (or) using the intermediation of electronic communications services, with Article 105 of the Constitution. **Applicants – SIA Alfor and SIA Admirālu klubs** – request an assessment of compliance of Articles 8 and 9 of the Covid-19 Law with the first and the third sentences of Article 105 of the Constitution, covering in their application both in-person gambling (gambling halls) and interactive gambling.

According to the Applicants, Articles 8 and 9 of the Covid-19 Law violated the Applicants’ rights to property enshrined in the Constitution. The contested provisions prevented the Applicants from gaining profit from their business activities, including profit that can be reasonably expected from involvement in these business activities.

The law does not provide for the infringement of fundamental rights.

SIA Alfor and *SIA Admirāļu klubs* hold that *the Saeima* was not entitled to adopt the specific restrictions. The legislature has provided that rights and freedoms of individuals and legal entities in an emergency situation may be restricted by the Cabinet. These powers of the Cabinet are also derived from Announcement of the State President No 8 of 23 March 2020 on the fundamental operating principles of constitutional bodies in an emergency situation. Therefore, the rights of *the Saeima* to restrict the rights and freedoms of persons during an emergency situation are limited and the restrictions were established by an unauthorised government body.

What is more, the contested provisions were not sufficiently clear because they were mutually controversial in respect of interactive gambling. Furthermore, the principle of good legislation was not observed when adopting the contested provisions. The annotation to the bill did not specify the impact, necessity and justification of the contested provisions. *The Saeima* had not considered compliance of the contested provisions with provisions of superior legal force. Likewise, it was not clear how the contested provisions could be applied retroactively and what was the duration of the ban on gambling in gambling halls because the two provisions specified different periods of the ban.

The Inspection, which in accordance with Article 9 of the Covid-19 Law was required to suspend all licences to operate gambling, was unable to understand its rights and responsibilities and to act accordingly. Similarly, the Applicants were unable to plan their activities.

Finally, Latvia did not properly announce that it invoked its right to derogate from Article 1 of Protocol No 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). Therefore, the contested provisions were non-compliant, *inter alia*, with requirements of Article 15 of the Convention.

A number of Applicants note that the restriction had no legitimate aim. The aim of the restriction quoted by some Members of *the Saeima*, i.e. to protect families from inappropriate expenses in financially challenging circumstances, was not in line with the overall aim of the Covid-19 Law. What is more, the

legislature acted controversially because at the same time online sales of alcohol were promoted.

SIA OPTIBET notes that the legitimate aim of the general restriction on gambling imposed by Article 9 of the Covid-19 Law consisted in suppressing the spread of Covid-19 by preventing people from spending long periods of time in closed spaces and protection of public welfare by preventing people from wasting money during an emergency situation. The restrictions on interactive gambling, which were also included in the Article in question, were not in line with this aim.

Firstly, interactive gambling is not held in-person, and it is not characterised by and does not require mutual contact between individuals and their presence in a single space. Therefore, the restrictions on interactive gambling are not connected with suppressing the spread of Covid-19.

Secondly, suspending the operation of interactive gambling is not an appropriate means of protecting public welfare because such restrictions result in directing people to an uncontrolled and unmonitored environment where they are subjected to even greater risks of excessive expenses.

With regard to restrictions on in-person gambling, the Applicants admit that closing down gambling halls and other spaces of gathering may be an appropriate means of suppressing the spread of Covid-19. However, it should be noted with regard to the aim of promoting financial caution and preventing the public from inappropriate expenses that during other crises Latvia did not restrict gambling. At the same time, statistical data suggest that as people's income decreases or their concerns about dwindling income in the future grow, the number of gamblers and/or amounts spent on gambling also decrease. Therefore, there is no reason to expect that people will increasingly turn to gambling. What is more, the legislature is obligated to justify its laws by evidence. In this specific situation, it is clear that the legislature did not have data or any estimates of the scope of the expected economic crisis. Finally, gambling is a sector of Latvia's national economy that contributes significantly to the Latvian economy by both paying significant amount of tax to the national budget and employing a large number of people. By prohibiting the Applicants from operating gambling, the legislature in fact increased the likelihood of job losses.

Likewise, the legislature did not consider if in this specific case there were other alternative means of achieving the aims it had set with similar or even better quality with regard to both interactive and in-person gambling.

With regard to interactive gambling, the existing regulation had already established various rules of responsible gambling. Nothing suggested that in the emergency situation people who previously had no interest in gambling would get involved in it because the advertising of gambling was prohibited. If the legislature was concerned about risks related to financial caution during the emergency situation, it could have introduced additional compulsory requirements for gambling operators. It follows that, prior to adopting the contested provision, the legislature did not consider if the legitimate aim could be achieved with other less restrictive means and did not justify its actions.

No other country in a similar situation introduced such restrictions on operating interactive gambling. What is more, the legitimate aim set by the legislature, i.e. protecting families against inappropriate expenses in financially challenging circumstances, was too broad and vague and could have been achieved with any other business, economic, social, etc. restrictions.

Furthermore, the restrictions on operating gambling set forth in Article 9 of the Covid-19 Law remained in force during the entire period that the law was applied. Applying the restrictions only during the emergency situation would have been a less restrictive means.

It is the opinion of the Applicants that the legitimate aim of the restrictions on gambling could have been achieved with measures that directly seek to reduce the market share of illegal interactive gambling rather than unjustifiably restrict the work of licensed gambling operators.

With regard to restrictions on in-person gambling, the Applicants note that the continuation of other types of business activities was not entirely prohibited. The full scope of requirements imposed on trading venues, catering venues and food chain operators could also have been met by the Applicants. Therefore, the legitimate aims with regard to in-person gambling could have been achieved with less restrictive means.

The suspension of the rights to specific business activities previously granted to the Applicants in perpetuity imposed on them the heaviest possible property rights restrictions. According to the Applicants, they met all criteria set by the legislature for receiving gambling operation licences, whereas the restrictions increased the likelihood that they would be unable to maintain the level of employment and the amount of tax paid by the industry. The restrictions also decreased the market value of gambling operators and caused them a total loss of approximately a million euros every week. However, the application of the contested provisions cannot be seen to have given a significant contribution to public welfare. When examining the case in question, it is necessary to take account of the negative impact of Article 9 of the Covid-19 Law on protecting public welfare and health, as well as its impact on the national economy in general. Namely, a blanket ban on gambling not only caused an immediate fiscal loss but also put additional administrative burden on the law enforcement authorities that would have to confront consequences of the ban on gambling, i.e. illegal gambling. Even in the emergency situation there was no social necessity for such restrictions and the legislature acted on assumptions of separate MPs.

Finally, in adopting the restrictions on operating interactive gambling set forth in Article 9 of the Covid-19 Law the legislature did not respect legitimate expectations established when issuing the licence and did not provide for a reasonable transitional period for the Applicants to adapt to the situation and ensure complete suspension of interactive gambling. Neither did the legislature provide for a compensation mechanism that would have recompensed the Applicants for restricting their property rights. In view of the above, it can be concluded that the public good seemingly resulting from introducing the restrictions on interactive gambling did not exceed the damage caused to the Applicants' rights and interests.

In the opinion of the Applicants, similar arguments can be given also in respect of disproportionality of the restrictions on in-person gambling.

Therefore, Articles 8 and 9 of the Covid-19 Law are non-compliant with Article 105 of the Constitution.

3.2. According to *SIA OPTIBET*, its rights derived from Article 49 of the Treaty on the Functioning of the European Union were also affected.

Shares of capital of *SIA OPTIBET* are owned by a company registered in Sweden. It means that a company registered in another EU Member State exercises decisive influence on *SIA OPTIBET* and *SIA OPTIBET* in fact operates in Latvia as a subsidiary of a company registered in Sweden. Therefore, a cross-border element can be identified. It follows that application of Article 9 of the Covid-19 Law, namely, the ban on operating interactive gambling, affected the rights of *SIA OPTIBET* to the freedom of business activities derived from Article 49 of the Treaty on the Functioning of the European Union.

Article 9 of the Covid-19 Law only required the suspension of gambling and interactive gambling, and neither this nor other legal provisions of the Law restricted operating lotteries and interactive lotteries. This restriction amounted to concealed discrimination of enterprises from other Member States, including *SIA OPTIBET*, and unjustifiably created more favourable conditions for *VAS Latvijas Loto*.

The restriction can only achieve the set aim if it genuinely follows from an intention to achieve the aim in a consistent and systematic way. If a Member State encourages consumers to get involved in gambling to ensure financial gain for the State Treasury, the Member State cannot invoke the aim of reducing gambling if it pursues to justify the existing state of monopoly. These circumstances are indicative of concealed discrimination.

Such different treatment was not justified. There were no objective grounds for separating lotteries and interactive lotteries from other types of gambling, and interactive gambling in particular. Lotteries and interactive lotteries are also associated with addiction and the risk of excessive expenses, specifically with regard to less financially secure people in rural areas.

Restrictions that equally target enterprises of the respective Member State and those of other Member States can be considered interference with the freedom of business activities, even if they are not discriminative by their nature. Namely, even if the provision is not found to be discriminative, the fact that Article 9 of the Covid-19 Law did not apply to lotteries and interactive lotteries amounts to the

legislature's failure to ensure consistent and systematic achievement of the legitimate aim, i.e. the protection of public welfare. Therefore, the restrictions on interactive gambling set forth in Article 9 of the Covid-19 Law were non-compliant with Article 49 of the Treaty on the Functioning of the European Union.

SIA OPTIBET requests that Article 9 of the Covid-19 Law be declared void from the moment of infringement of the fundamental rights.

3.3. The Applicants *SIA Latsson Licencing*, *SIA Alfor* and *SIA Admirāļu klubs* request that Article 9 of the Covid-19 Law, insofar as it requires the suspension of licences to operate gambling in the interactive environment and (or) using the intermediation of electronic communications services for the duration of operation of this Law, be declared non-compliant also with Article 1 of the Constitution.

Article 9 of the Covid-19 Law contradicted the principles of legal certainty and legitimate expectations enshrined in Article 1 of the Constitution. What is more, Article 9 of the Covid-19 Law was also non-compliant with the principle of good legislation enshrined in the Constitution. In this way, by adopting the contested provisions the legislature violated Article 1 of the Constitution.

SIA Latsson Licencing requests that Article 9 of the Covid-19 Law be declared void from the moment of infringement of the fundamental rights.

On the grounds identical to the above arguments, the Applicants *SIA Alfor* and *SIA Admirāļu klubs* request that Article 9 in its entirety along with Article 8 of the Covid-19 Law, i.e. also restrictions on in-person gambling, be declared non-compliant with Article 1 of the Constitution.

3.4. The Applicants *SIA Alfor* and *SIA Admirāļu klubs* note that the contested provisions also contradicted the principle of equality established by Article 91 of the Constitution because they permitted different treatment of the Applicants in comparison to other persons that were in equal, and, according to specific criteria, comparable circumstances to those of the Applicants.

The persons in equal and comparable circumstances are operators of gambling and lotteries, including those operating interactive gambling and lotteries, and other business operators that in their own name engage in for-profit

commercial activities consisting in the provision of services or the selling of goods in specially equipped premises where gathering of clients is possible.

Firstly, the contested provisions established a different treatment in respect of the national scale lottery operator *VAS Latvijas Loto* because operations of this enterprise, i.e. organising numerical lottery games, instant lottery games and interactive lotteries, were not restricted at all. The Court of Justice of the European Union acknowledged that lotteries or draws and gaming machines cause equal potential harm for chance game players. What is more, chance games offered by *VAS Latvijas Loto* could be physically bought by any adult in dozens of outlets (e.g. kiosks) and in the internet without any restrictions. There were no reasonable grounds for establishing a different treatment of this kind, *inter alia*, from the point of view of the legitimate aim of the contested provisions. Furthermore, such treatment is to be deemed illegitimate state aid, which is incompatible with the domestic market. In fact, application of the contested provisions created a situation where players were forced to play chance games offered by *VAS Latvijas Loto*, as they had no alternative.

Secondly, the contested provisions established different treatment of gambling operators in comparison with other businesses. There were no reasons why the same safety measures that were introduced to suppress the spread of Covid-19 in general would not have been sufficient specifically in the case of gambling venues.

Hence, the contested provisions unjustifiably established different treatment and therefore were non-compliant with the first sentence of Article 91 of the Constitution.

SIA Alfor and *SIA Admirāļu klubs* request that the contested provisions be declared void from the moment of infringement of the fundamental rights.

3.5. *SIA Alfor*, *SIA Admirāļu klubs*, *SIA OPTIBET* and *SIA Lattson Licencing* have submitted their opinions with regard to materials of the case.

In their opinions, the Applicants justify their view that proceedings in the case under examination are to be pursued, even though the contested proceedings have already become void.

The Applicants note that an emergency situation in itself was not a reason why the legislature, in adopting the contested provisions, could deviate from the legislative procedure established by the law. The legislative procedure in an emergency situation is already regulated by the provision for urgent draft laws. Further deviations were not permissible. In view of the absolute nature of the restrictions on property rights established by the contested provisions, the legislature had a special responsibility to request the opinion of persons subject to the absolute restrictions.

What is more, the emergency situation in Latvia was declared and introduced to suppress the spread of Covid-19, rather than for economic reasons or to protect public welfare. Therefore, the adoption of restrictions on interactive gambling operators unrelated to suppressing the spread of Covid-19 cannot be deemed a genuine response to the emergency situation. *The Saeima* had no right to invoke the emergency situation to extend its powers without justification. Restrictions on interactive gambling during the emergency situation were not introduced for the benefit of public health, especially in view of the fact that at the same time the legislature allowed online sales of alcohol. Furthermore, the legislature did not request the Inspection to confirm if activity of interactive gamblers had really increased since declaring the emergency situation in Latvia, and therefore it did not make sure that there were legitimate grounds for the stated legitimate aim.

Practical observations suggest that the legitimate aim of restrictions on interactive gambling were not achieved. During the period of application of the contested provisions, the market for unlicensed or illegal gambling saw a significant increase. Protecting the health of people addicted to gambling and preventing these people from increasing involvement in gambling is not to be deemed a special legitimate aim to be established during the emergency situation, but rather a legitimate aim that already underlies the State position, its policy and regulation as a whole, and acts as a basis for the already existing instruments of restricting gambling. However, there is no proof that the regulation in force prior to declaring the emergency situation was not sufficient. The legitimate aim with

regard to interactive gambling could also have been achieved by, for example, prohibiting the registration of new players.

The Applicants disagree with the opinion of the Competition Council. References on which the above opinion is based do not justify the statement that *VAS Latvijas Loto* and the Applicants (operators of interactive gambling and gaming machines) do not share the same market. Both lotteries and other types of gambling are characterised by the element of chance, which is also included in mutually comparable definitions of these games contained in the law. Their comparability follows also from other legal instruments. From the point of view of a consumer, interactive gambling and interactive instant lotteries are particularly interchangeable. If there were no monopoly on instant lotteries in Latvia, operators of interactive gambling could also quickly and without substantial extra expense re-focus to interactive lotteries. This is proved, *inter alia*, by the fact that many of instant lotteries offered by *VAS Latvijas Loto* are identical to interactive gambling organised by interactive gambling operators in Lithuania.

Financial results of *VAS Latvijas Loto* improved significantly during the emergency situation. Specifically, compared to the second quarter of 2019, its profit increased by 34 per cent and it was the best quarter in the entire history of *VAS Latvijas Loto* in terms of financial results. In view of the restrictions introduced during the emergency situation and indications of economic downturn, such improvement is to be deemed anomalous. This is the most evident proof of both interchangeability of the products and equality and comparability of circumstances of their operators.

The monopoly of *VAS Latvijas Loto* cannot justify the view that operators of interactive gambling and *VAS Latvijas Loto* are not in equal and, according to specific criteria, comparable circumstances. It is necessary to take into account the fact that in the established case-law of the European Court of Justice and working documents of EU authorities lotteries, including interactive lotteries, are considered as a type of gambling. Furthermore, factors emphasised by *the Saeima* as making interactive gambling particularly dangerous are also characteristic of interactive instant lotteries. In its opinion, *the Saeima* also acknowledged that both gambling and lotteries are potentially addictive.

Observations of *the Saeima* that operations of *VAS Latvijas Loto* were not restricted because of exclusive additional control available to the State should be considered in the context of decisions of the Organisation for Economic Cooperation and Development on the governance of state-owned enterprises. It can be concluded from these decisions that, even in an emergency situation, the State may not in any way interfere with the work of institutions governing *VAS Latvijas Loto* and take benefit of its rights as an owner. The State may only interfere with the work of *VAS Latvijas Loto* by means of general regulations, including legal instruments. *VAS Latvijas Loto* continued its operation and advertising campaigns despite the emergency situation, enticing customers to engage in draws and instant lotteries, thus increasing its profits.

4. The body issuing the contested provisions, i.e. *the Saeima*, disagrees with the Applicants' opinion and considers the contested provisions compliant with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution and considers Article 9 of the Covid-19 Law also compliant with Article 49 of the Treaty on the Functioning of the European Union.

4.1. In its rejoinder to the application of *SIA OPTIBET*, *the Saeima* notes that Article 9 of the Covid-19 Law is compliant with the Constitution and Article 49 of the Treaty on the Functioning of the European Union.

The Saeima agrees that application of the contested provisions suspended gambling operation licences and therefore gambling operators were temporarily denied all rights to operate gambling. As a result, the contested provision for a specific period of time restricted the Applicants' property rights enshrined in Article 105 of the Constitution.

Article 105 of the Constitution is to be defined in conjunction with the freedom of business activities set forth in Article 49 of the Treaty on the Functioning of the European Union. According to the case-law of the European Court of Justice, restrictions imposed on the gambling sector may not be assessed separately from negative moral and financial effects caused by gambling to individuals and society in general. Assessing whether the legitimate aims set by the State merit a complete or partial ban on gambling and betting, or they should

only be restricted with more or less stringent supervisory measures, is at the discretion of each Member State. In order to make sure that the restriction of fundamental rights determined by the contested provision is compliant with Article 49 of the Treaty on the Functioning of the European Union it is necessary to verify that this restriction is not applied in a discriminating manner and whether it meets the proportionality requirements. In its essence, this proportionality test applied in methodology of the European Court of Justice is similar to the test applied by the Constitutional Court, therefore compliance of the contested provision with Article 105 of the Constitution is to be assessed in conjunction with Article 49 of the Treaty on the Functioning of the European Union.

The restriction of fundamental rights was determined by a duly adopted law. The State must continue to operate also in an emergency situation, whereas human rights have to be protected with available means and within the framework of discretionary powers. The basic principles to be observed during an emergency situation are established by international fundamental rights.

In an emergency situation, the legislature may introduce greater restrictions on fundamental rights or suspend specific fundamental rights, but some fundamental rights may not be restricted even in an emergency situation. Property rights are not among the fundamental rights the restriction of which is specifically unacceptable in an emergency situation.

The Saeima admits that the Covid-19 Law was adopted in a single day during an emergency situation, in a moment crucial for the State. Despite this, it was discussed in line with a democratic legislative process at both *the Saeima* Budgetary and Financial (Taxation) Committee meeting and a Plenary sitting of *the Saeima*. That said, the provisions may not be declared non-compliant with the Constitution on the grounds of editorial deficiencies in Articles 8 and 9 of the Covid-19 Law alone. An interpretation of the contested provisions whereby, for the duration of operation of the Law, the ban on gambling should also apply to the interactive environment is in line with the legislature's will, which was confirmed at the Plenary sitting of *the Saeima* that adopted the Covid-19 Law at second (final) reading. Retroactive application of the Covid-19 Law did not affect the Applicants' legal position in any way. Therefore, the restriction of

fundamental rights established by the contested provision was determined by the law.

The restriction of fundamental rights imposed by Article 9 of the Covid-19 Law was introduced in order to protect people addicted to gambling and their families from inappropriate expenses and deterioration of their financial situation during an economic downturn and an emergency situation, as well as to protect the health of people addicted to gambling and prevent them from an increasing engagement in gambling. These aims are in line with the legitimate aims enshrined in Article 116 of the Constitution, i.e. protecting human rights and public welfare.

The means selected by the legislature were applied to achieve the legitimate aims. The restriction of fundamental rights was necessary. Social activities of people in an emergency situation are reduced to a minimum, therefore there were no doubts that risks associated with the gambling sector were disproportionately high. In this situation the legitimate aims could not have been achieved in any other way except restricting the availability of gambling (specifically in the interactive environment). At the same time, introduction of a transitional period would not have allowed for achieving the legitimate aim with sufficient quality. Hence, there were no other less disruptive means of achieving the legitimate aim of restricting fundamental rights with at least the same quality.

Also in an emergency situation, ensuring proportionality requires a balance between restricting a person's fundamental rights and public benefit. It should be taken into account that it is not just a right, but an obligation of the legislature to take measures to prevent and reduce adverse social and economic effects of a pandemic.

There are reasons to believe that, when exclusive rights to operate gambling are granted to a single organisation that is subject to rigorous control by public authorities, the State will be able to control the risks associated with the gambling sector and prevent incentives for excessive expenses related to gambling, as well as to combat addiction to it with greater efficiency than in the case where the respective measures are taken by competing private service providers, even if they are subject to a system of permits and a system of controls

and sanctions. In view of the above, Article 9 of the Covid-19 Law is not to be deemed discriminative because the groups of persons specified in the Application are not in equal and, according to specific criteria, comparable circumstances.

The issue of whether the legislature observed a reasonable balance between the expectations of a business entity and the rights of specific persons and society as a whole, the protection of which is the aim of the contested provision, is to be considered in conjunction with the arguments given above.

Finally, observation of the precautionary principle by the legislature in an emergency situation takes a significant place in the case under examination. According to the precautionary principle, timely prevention of harm is more efficient than combating harmful effects. A prompt adoption of the contested provision in the emergency situation according to the above principle enabled Latvia to prevent mass engagement of addicted individuals in gambling. What is more, the provision had a time restriction. Hence, the adverse effects caused to the business entity by the restriction of fundamental rights established by Article 9 of the Covid-19 Law did not exceed the benefits gained from the restriction by specific persons, society and the State as a whole in the emergency situation.

Therefore, the restriction established by Article 9 of the Covid-19 Law is proportionate and compliant with Article 105 of the Constitution and with Article 49 of the Treaty on the Functioning of the European Union.

4.2. *The Saeima* did not provide a separate legal justification with regard to compliance of Article 9 of the Covid-19 Law with Article 91 of the Constitution and noted that the above considerations also applied to this issue and that the business entities in question were not in equal and, according to specific criteria, comparable circumstances. Likewise, no separate basis was provided with regard to compliance of Article 8 of the Covid-19 Law with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution, with *the Saeima* referring to the legal basis already given with regard to Article 9 of the Covid-19 Law.

4.3. It is observed in additional remarks of *the Saeima* that one of the legitimate aims of restricting the operation of in-person gambling venues (gambling halls, casinos and bingo halls) was to protect public health. The authors

of the respective proposals argued that it was justified, *inter alia*, by the fact that such restrictions were necessary to prevent large numbers of people from spending long periods of time in closed spaces.

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. This right gives rise to the obligation of the State to take efficient measures aimed at the prevention, treatment and combating of epidemic and endemic, occupational and other diseases. In order to suppress the virus causing Covid-19, the State urgently had to introduce measures necessary to limit its spread. One such measure consisted in introducing restrictions to prevent large numbers of people from spending long periods of time in closed spaces.

The Saeima observes with regard to mutual comparability of gambling operators and lottery operators that the only operator of interactive lotteries in Latvia is *VAS Latvijas Loto*. Operating interactive instant lotteries was not restricted because the State was able to achieve its aims set in the emergency situation without introducing specific restrictions in the Covid-19 Law.

Profits gained by *VAS Latvijas Loto* from its operations are transferred to the national budget, providing support to solving various important social issues. Therefore, it should be acknowledged that interactive gambling operators and the operator of lotteries *VAS Latvijas Loto* are not in equal and, according to specific criteria, comparable circumstances.

5. A joined party – Latvian Centre for Disease Prevention and Control (Slimību profilakses un kontroles centrs) (hereinafter – the SPKC) – observes that decisions taken in Latvia with regard to epidemiological safety are to be considered in conjunction with numerous factors, including rapid deterioration of the epidemiological situation, insufficient scientific proof of peculiarities of the Covid-19 infection, the risks of spreading the infection and public health threat, the preparedness and capacity of healthcare institutions to accept potentially large patient flows, declaring an emergency situation, availability of personal protection equipment along with other restrictive measures in place in Latvia and other countries. It should be taken into account that at the

start of the Covid-19 outbreak recommendations or regulations to ensure continuous operation in the Covid-19 crisis were not available in many sectors.

The negative effect of gambling (irrespective of the environment) on human mental health and welfare (well-being), especially in difficult situations and circumstances characteristic of an emergency situation, is described in numerous publications. Decisions taken during the emergency situation were aimed at and applicable to reducing and mitigating both health-related and social consequences of the Covid-19 pandemic. This interpretation is fully in line with the definition of health used in the Constitution of the World Health Organisation of 1946, namely: health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

The SPKC did not propose prohibiting gambling during the emergency situation but it understands and respects the significance of the decisions taken for the benefit of public health.

Participation in various leisure activities detracts people's focus from the necessity to observe safety measures. For example, the threat of excessive loss during gambling exceeds the fear of contracting the virus that causes Covid-19.

6. A joined party – Uga Dumpis, infectologist, Head of Infection Control Service at Pauls Stradins Clinical University Hospital – notes that gambling halls are considered spaces with a particularly high risk of Covid-19 transmission.

This is due to a combination of numerous factors. The risk of transmission in closed spaces is significantly higher than in open spaces. Players stay in the spaces longer than 15 minutes. Players and staff can get infected both staying on the same spot and moving around (going to the bar, for a smoke, etc.). Mutual contacts cannot be prevented. Games take place on surfaces that are difficult to disinfect. Gamblers may belong to the transmission risk group (age 18–40) and may have a tendency to disobey requirements and orders.

The decision not to close down certain undertakings requires that the social or economic benefits of such steps be very significant.

7. **A joined party – the Competition Council** – refers to its decision with regard to the merger of *SIA Olympic Casino Latvia* and *SIA GARKALNS* in which it concluded that gaming machines are to be separated from other types of gambling in a separate market of specific goods. This conclusion was made mainly on the basis of information provided by market participants suggesting that gaming machines cannot be replaced with any other type of gambling because each type of gambling is based on different principles. The customers are also mostly interested in a specific type of gambling.

Gaming machines are incomparable with other types of interactive gambling also because their target customers differ: namely, gaming halls are visited by people attracted by personal contact with the staff, the atmosphere of gambling halls, the environment with gaming machines and availability of the bar.

In the opinion of the Competition Council, the results of games operated by *VAS Latvijas Loto* completely or predominantly depend on a combination of random or unknown events that the player cannot affect either by their knowledge or abilities. By contrast, the services provided by the Applicants are based on logic and knowledge of the specific type of gambling and are not intrinsically dependent on a combination of random or unknown events. Therefore, it can be concluded that the services provided by *VAS Latvijas Loto* and the Applicants are not mutually replaceable in the context of the specific market definition. Given that *VAS Latvijas Loto* and the Applicants are not participants of the same specific market, their operations do not overlap in the context of the specific market. Therefore, their activities and competition and operation requirements determined by the State for the respective markets (including restrictions established by the contested provisions) do not affect one another and do not create different competition conditions for *VAS Latvijas Loto* and the Applicants.

Pursuant to Article 106 of the Treaty on the Functioning of the European Union, a dominant position of a market participant is not prohibited as such. Given that the contested provisions concern a specific market where *VAS Latvijas Loto* does not operate, pursuant to Article 106(1) of the Treaty on the Functioning of the European Union in conjunction with Article 102 of the Treaty on the Functioning of the European Union, operations of *VAS Latvijas Loto* do not violate

the EU competition law. Likewise, there was no violation of provisions of Article 106(2) of the Treaty on the Functioning of the European Union applicable to the operations of *VAS Latvijas Loto* and the requirement set forth in Article 106(1) of the Treaty on the Functioning of the European Union to comply with the rules on state support.

Conclusions

8. The Covid-19 Law and the contested provisions established therein were repealed on 10 June 2020.

Pursuant to Section 29(1)(2) of the Constitutional Court Law, proceedings in a case may be terminated by a decision of the Constitutional Court if the contested legal provision has become void. However, although the Law enables the Constitutional Court to terminate the proceedings in such a case, it does not require the Court to do so. The Constitutional Court has to verify that no circumstances exist that require that the proceedings be pursued regardless (*e.g. cf. paragraph 10 of the Constitutional Court Judgment of 3 April 2014 on terminating proceedings in Case No 2013-11-01*).

Persons lodge constitutional challenges in order to defend their fundamental rights enshrined in the Constitution. For that reason, when considering the termination of proceedings in a case, the Constitutional Court must take account of the necessity to defend the fundamental rights of persons enshrined in the Constitution (*see paragraph 4 of the Constitutional Court Judgment of 12 February 2008 in Case No 2007-15-01*). The fact that the person lodging the constitutional challenge seeks the invalidation of the contested provision from a point of time in the past may indicate that proceedings in the case are to be pursued. A judgment of the Constitutional Court may be the only legal means for the person lodging the constitutional challenge to proceed with defence of their infringed rights (*see paragraph 7 of the Constitutional Court Judgment of 18 April 2016 on terminating proceedings in Case No 2015-15-01*).

The case under examination was initiated following a constitutional challenge. The Applicants requested that the Constitutional Court declare the

contested provisions void from the moment of infringement of the fundamental rights. Therefore, proceedings in the case are to be pursued and the case is to be examined on merits in order to ensure that the Applicants' fundamental rights are protected. Pursuant to Section 29(1)(2) of the Constitutional Court Law, a repealment of contested provisions cannot be considered sufficient grounds for terminating the proceedings because it does not resolve the existing dispute and does not remove possible infringement of the persons' fundamental rights. Hence, the court proceedings in the case under examination are to be pursued.

Therefore, there are no grounds for the Constitutional Court to terminate the proceedings despite the fact that the contested provisions have been repealed.

9. The case requires the examination of challenges with regard to compliance of a number of contested provisions with a number of provisions of superior legal force. Specifically, the case requires assessment of the following:

1) compliance of Article 8 of the Covid-19 Law with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution,

2) compliance of Article 9 of the Covid-19 Law with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution,

3) compliance of Article 9 of the Covid-19 Law with Article 49 of the Treaty on the Functioning of the European Union.

If compliance of numerous legal provisions with numerous provisions of the Constitution and other laws is challenged, the Constitutional Court, taking account of the nature of the case, must determine the most efficient approach to assessing this compliance (*cf. paragraph 23 of the Constitutional Court Judgment of 26 April 2018 in Case No 2017-18-01*).

10. Pursuant to Article 8 of the Covid-19 Law, operating gambling and lotteries is prohibited during the emergency situation related to the spread of Covid-19, except for interactive gambling, numerical lotteries, and instant

lotteries. Whereas pursuant to Article 9 of the Covid-19 Law, for the duration of operation of this Law, the Inspection shall suspend all the licences to operate gambling both in physical locations where gambling is organised (licence of a casino, license of a gambling hall, licence of a bingo hall) and in the interactive environment and (or) using the intermediation of electronic communications services.

It can be inferred that the main difference between these two provisions consists in the fact that Article 9 of the Covid-19 Law imposes restrictions on both gambling at physical venues (hereinafter – in-person gambling) and interactive gambling, whereas Article 8 only applies to in-person gambling. Namely, the actual effect of Article 8 of the Covid-19 Law is achieved in even greater degree by the provision of Article 9, which, *inter alia*, introduces broader restrictions.

Taking account of the overlap of the provisions and the fact that both provisions restrict in-person gambling, the contested provisions are to be considered as closely related and the Constitutional Court will examine the constitutionality of these provisions simultaneously. The effect of the contested provisions on in-person gambling and interactive gambling will also be examined separately. Namely, the constitutionality of both contested provisions will be assessed by examining restrictions on gambling insofar as they restrict in-person gambling, whereas assessment of the constitutionality of restrictions on interactive gambling will only focus on compliance of Article 9 of the Covid-19 Law with respective provisions of the Constitution insofar as this Article restricts interactive gambling.

Given that compliance of the provisions with numerous provisions of the Constitution and Article 49 of the Treaty on the Functioning of the European Union is challenged, the Constitutional Court will determine the sequence of assessing the compliance.

10.1. According to the application of *SIA OPTIBET*, Article 9 of the Covid-19 Law contradicts Article 49 of the Treaty on the Functioning of the European Union.

Article 49 of the Treaty on the Functioning of the European Union protects EU residents and legal entities wishing to engage in economic activities in another

EU Member State. It aims to ensure that all nationals of Member States engaged in business activities in another Member State receive the same treatment as nationals of this Member State (*see paragraph 14 of the Court of Justice of the European Union Judgment of 28 January 1986 in Case C-270/83 the Commission v France; see also: Kellerbauer M., Klamert M., Tomkin J. (Eds.) The EU Treaties and the Charter of Fundamental Rights. The Commentary. Oxford: Oxford University, 2019, p. 658*). Namely, it follows from Article 49 of the Treaty on the Functioning of the European Union in conjunction with Article 54 of the Treaty on the Functioning of the European Union that enterprises established in any Member State have the right to maintain agencies or subsidiaries in another Member State, set up branches or acquire shares of existing enterprises (*see paragraph 18 of the Court of Justice of the European Union Judgment of 28 January 1986 in Case C-270/83 the Commission v France and paragraphs 19–20 of the Judgment of 9 March 1999 in Case C-212/97 Centros Ltd; see also: Geiger R., Khan D.-E., Kotzur M. European Union Treaties. A Commentary. München: C.H.Beck; Oxford, U.K.: Hart, 2015, pp. 359, 377*). Enterprises wishing to exercise these rights first of all need to be established in accordance with civil law or commercial law of a Member State, and they can challenge legal provisions of the state where they wish to exercise the above rights or legal provisions of their country of residence if these restrict the pursuit of business activities in another country (*see: Kellerbauer M., Klamert M., Tomkin J. (Eds.) The EU Treaties and the Charter of Fundamental Rights. The Commentary. Oxford: Oxford University, 2019, p. 688*).

However, the case under examination does not concern the rights of EU Member State enterprises to commence business activities in Latvia. Firstly, all Applicants are commercial enterprises that have been established and operate in Latvia. Moreover, the Applicant in question did not specify how the provision of gambling services in Latvia by legal entities registered in other Member States or the provision of gambling services in other Member States by legal entities registered in Latvia is infringed. Secondly, the contested provision does not stipulate any different treatment on the grounds of nationality or registration in another Member State or with regard to enterprises with capital connected with

enterprises in other EU Member States. Therefore, the rights provided under Article 49 of the Treaty on the Functioning of the European Union were not infringed in the case of any of the Applicants. Furthermore, the fact whether the legislature ensured equal treatment of all chance game operators registered in Latvia can be verified by assessing compliance of the contested provisions with Article 1, the first and the third sentence of Article 105 and the first sentence of Article 91 of the Constitution.

It follows that compliance of Article 9 of the Covid-19 Law with Article 49 of the Treaty on the Functioning of the European Union is not to be assessed in the case under examination. Proceedings in the Case in this regard are to be terminated pursuant to Section 29(1)(6) of the Constitutional Court Law because their pursuit is not possible.

Therefore, proceedings in the Case insofar as it concerns possible non-compliance of Article 9 of the Covid-19 Law with Article 49 of the Treaty on the Functioning of the European Union are to be terminated.

10.2. The Applicants stated that the contested provisions infringe property rights of gambling operators enshrined in Article 105 of the Constitution, along with the principles of legitimate expectations and legal certainty enshrined in Article 1 of the Constitution.

According to Article 1 of the Constitution, Latvia is an independent democratic republic. The Constitutional Court has acknowledged that Article 1 of the Constitution comprises the principle of legitimate expectations derived from substantive rules of a democratic rule-of-law state. The principle of legitimate expectations is connected with the principle of legal certainty and ensures stability that it requires by prohibiting inconsistent action by the State. This principle is based on the fact that an individual can rely on legitimate and consistent action by the State, whereas the State must protect the trust placed in it. The existence of the principle of legitimate expectations depends not only on the trust in the State's authority but also on the possibility of the addressees of the legal provisions to exercise their freedom of action (*cf. paragraph 16.2 of the Constitutional Court Judgment of 8 March 2017 in Case No 2016-07-01*).

The principle of legitimate expectations protects the rights obtained by a person, i.e. the person can expect that the rights obtained pursuant to a valid legal instrument will be preserved and enforced for a specific time period. However, the principle of legitimate expectations does not preclude rights obtained by an individual being amended by legitimate means. Namely, this principle does not provide grounds to expect that an established legal situation will never change (*cf. paragraph 16.2 of the Constitutional Court Judgment of 8 March 2017 in Case No 2016-07-01*).

When assessing compliance of a legal provision with general principles of law derived from substantive rules of a democratic rule-of-law state covered by Article 1 of the Constitution, it should be taken into account that manifestations of these principles may differ in various areas of law. The control exercised by the Constitutional Court also depends on the nature of the contested provision, its connection with other constitutional provisions and its place in the legal system. If the challenge in the Case concerns compliance of a legal provision with both the principle of legal expectations and Article 105 of the Constitution, compliance of the contested provision with Article 1 of the Constitution is to be assessed in conjunction with Article 105 of the Constitution (*e.g. cf. paragraph 16.3 of the Constitutional Court Judgment of 8 March 2017 in Case No 2016-07-01*).

The legal reasoning of the Applicants is based on the fact that the contested provisions infringe their property rights enshrined in the Constitution. The Applicants' reasoning with respect to possible violation of the principle of legal expectations is connected with their arguments with regard to the restriction of the fundamental rights enshrined in Article 105 of the Constitution. Namely, gambling operators relied on the fact that they would be able to continue their business activities in accordance with the licences issued to them. Therefore, the principle of legitimate expectations also has to be taken into account when examining a possible infringement of a person's property rights (*cf. paragraph 16.2 of the Constitutional Court Judgment of 12 February 2020 in Case No 2019-05-01*).

It follows that compliance of the contested provisions with the principle of legitimate expectations enshrined in Article 1 of the Constitution must be assessed in conjunction with Article 105 of the Constitution.

10.3. Pursuant to Article 91 of the Constitution, all people in Latvia shall be equal before the law and the courts. The principle of equality enshrined in this provision allows and even requires different treatment of persons whose circumstances differ, and it also allows different treatment of people whose circumstances are equal and comparable if there are objective and reasonable grounds for such treatment (*e.g. cf. paragraph 9 of the Constitutional Court Judgment of 29 June 2018 in Case No 2017-28-0306*).

The principle of equality must ensure the existence of a single legal order. Specifically, it must ensure a pre-requisite of a rule-of-law state, i.e. comprehensive application of the law to all persons, and non-preferential application of the law. It guarantees the full effect of the law, its objective and dispassionate application and ensures that no one is allowed to ignore provisions of the law. However, such unity of the legal order does not amount to levelling because equality allows differentiated approach if it is justified in a democratic society (*cf. paragraph 15 of the Constitutional Court Judgment of 15 June 2017 in Case No 2016-11-01*).

It follows from the applications that the key issue in the Case – whether the suspension of in-person gambling was permissible – primarily concerns the Applicants’ fundamental rights enshrined in Articles 1 and 105 of the Constitution. Following verification of compliance of the contested provisions with Articles 1 and 105 of the Constitution, it is possible, based on conclusions made, to assess compliance of these provisions with the first sentence of Article 91 of the Constitution.

Therefore, the Constitutional Court will verify compliance of the contested provisions with Articles 1 and 105 of the Constitution in the first place, and will then verify their compliance with the first sentence of Article 91 of the Constitution.

11. To assess compliance of the contested provisions with property rights enshrined in Article 105 of the Constitution and the principles of legitimate expectations and legal certainty derived from substantive rules of a democratic rule-of-law state covered by Article 1 of the Constitution, it is necessary to

establish if the contested provisions infringe the rights of the respective person, namely, it is necessary to establish the object of property rights in the case under examination and if these rights are infringed by the contested provisions (*see paragraph 19 of the Constitutional Court Judgment of 18 December 2018 in Case No 2016-04-03*).

11.1. When establishing the content of the fundamental rights set forth by the Constitution, it is necessary to take account of Latvia's international human rights obligations. Pursuant to Article 89 of the Constitution, 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 legislature is to harmonise the human rights provisions enshrined in the Constitution with provisions of international law. International human rights provisions binding upon Latvia and the practice of their application at the constitutional level also serve as a means of concretisation in order to determine the content and scope of the principles of a democratic rule-of-law state, insofar as it does not reduce the protection of the fundamental rights enshrined in the Constitution (*see paragraph 18 of the Constitutional Court Judgment of 16 June 2020 in Case No 2019-25-03*). In the case under examination, Article 105 of the Constitution is to be assessed, *inter alia*, in conjunction with Article 1 of Protocol No 1 of the Convention.

Pursuant to Article 1 of Protocol No 1 of the Convention: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

11.2. The Applicants claim that the contested provisions infringe their rights to property because they prevent the Applicants from pursuing business activities, i.e. operating gambling, on the basis of a licence. *The Saeima* also agrees with this statement.

Article 105 of the Constitution protects a person's legally acquired property; however, the second and third sentences permit the State to restrict property rights by law in the public interests (*see paragraph 12.3 of the Constitutional Court Judgment of 8 April 2015 in Case No 2014-34-01*). The Constitutional Court has acknowledged that rights to property cover also a person's right to pursue business activities on the basis of a licence (*e.g. see paragraph 17.1 of the Constitutional Court Judgment of 12 February 2020 in Case No 2019-05-01*).

The procedure for licensing gambling operators is set forth in the Law on Gambling and Lotteries. Pursuant to Section 3(1) of this Law, in the Republic of Latvia, gambling may only be operated following receipt of respective licences. Namely, in order to operate gambling in physical gambling venues, business operators must obtain a licence for operating gambling and a licence for a respective gambling venue (a casino licence, gambling hall licence, bingo hall licence, licence for a betting venue or venue for accepting bets). In order to operate interactive gambling, in addition to a licence for operating gambling, a further licence for operating interactive gambling is required. Pursuant to the Law on Lottery and Gambling Duty and Tax, business undertakings can also obtain a licence for operating interactive gambling only.

It follows from materials in the Case and publicly accessible information that all Applicants have received licences for operating gambling that are currently valid (*see materials in the Case, vol. 1, p. 40, vol. 2, pp. 69–72, vol. 3, pp. 1 and 73*). The Applicants pursued their business activities on the basis of these licences.

Hence, the Applicants' rights to pursue specific business activities by operating in-person and/or interactive gambling granted on the basis of a licence are covered by Article 105 of the Constitution.

Interfering with business activities pursued on the basis of a licence can be construed as infringement of the rights to property. In such a case the restriction would be manifested as a specific negative impact caused by the application of the contested provision (*see paragraph 17.2 of the Constitutional Court Judgment of 12 February 2020 in Case No 2019-05-01*).

The contested provisions prohibit operating gambling and lotteries, except for interactive gambling, numerical lotteries and instant lotteries, whereas the Inspection is obligated to suspend all licences to operate gambling both in physical venues and in the interactive environment. With Decision No 2020/0161 of 6 April 2020 suspending licences to operate gambling, the Inspection, *inter alia*, suspended specific licences to operate gambling issued to the Applicants. Therefore, the contested provisions restricted persons' rights to pursue specific type of business activities that these persons had previously pursued on the basis of the licences.

It follows from materials in the Case that the only in-person gambling activities operated by the Applicants challenging the restriction on in-person gambling laid down in Article 8 of the Covid-19 Law, i.e. *SIA Alfor* and *SIA Admirāļu klubs*, were gaming machines. Therefore, infringement of these Applicants' rights in the context of Article 8 of the Covid-19 Law resulted directly and only from restrictions on this type of gambling and they are not affected by restrictions on other types of in-person gambling, such as casinos. However, the Constitutional Court is under no obligation to narrow down the scope of the challenge. Therefore, further in this Case the prohibition of operating in-person gambling will still be considered in a wider scope.

Hence, the contested provisions restrict the Applicants' fundamental rights enshrined in the first and third sentences of Article 105 of the Constitution.

12. When establishing if the infringement of the Applicants' rights to property introduced by the contested provisions is justifiable, the Constitutional Court needs to assess the following:

- 1) if the infringement of the fundamental rights was introduced by law;
- 2) if the infringement has a legitimate aim;
- 3) if the infringement is proportionate to its legitimate aim (*e.g. see paragraph 18 of the Constitutional Court Judgment of 12 February 2020 in Case No 2019-05-01*).

13. In order to assess if the infringement of the Applicants' rights to property was introduced by law, the Constitutional Court needs to verify the following:

1) if the law was adopted in accordance with the procedure established by legislation;

2) if the law was promulgated and publicly accessible in accordance with legislation;

3) if the law is formulated with sufficient clarity for a person to understand the essence of the rights and obligations derived from it and to anticipate the consequences of its application (*e.g. see paragraph 14 of the Constitutional Court Judgment of 2 July 2015 in Case No 2015-01-01*).

13.1. At the second (fourteenth) extraordinary meeting of 20 March 2020, *the Saeima* passed at first reading the Draft Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 and declared it urgent. The Draft Law was discussed at two readings.

The restriction of fundamental rights established by the contested provisions was set forth by the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 adopted by *the Saeima* on 20 March 2020 and published in the official gazette *Latvijas Vēstnesis* No 2020/57B.1 on 21 March 2020.

13.2. According to the Applicants, the restriction was not determined by a duly adopted law.

Firstly, in the opinion of the Applicants, the powers of *the Saeima* to determine restrictions in an emergency situation are limited. In accordance with Section 4(1) of the Law on Emergency Situation and State of Exception (hereinafter – the Law on Emergency Situation), the legislature has provided that rights and freedoms of individuals and legal entities during an emergency situation may be restricted by the Cabinet, which acted in accordance with these powers when adopting Order No 103. Likewise, according to Announcement of the State President No 8 of 23 March 2020 on the fundamental operating principles of constitutional bodies in an emergency situation, the management of an emergency situation is a responsibility of the Cabinet. It follows that the restrictions were

established by an unauthorised government body and included in an inappropriate piece of legislation. At the very least, this constitutes a violation of the principle of inter-institutional loyalty.

What is more, when it introduced the contested provisions, Latvia did not announce that it invoked its right to derogate from observing property rights of persons enshrined in Article 1 of Protocol No 1 of the Convention, wherefore the contested provisions, *inter alia*, are non-compliant with provisions of the Convention and are not applicable.

Secondly, the contested provisions are not sufficiently clear and it is impossible to anticipate a specific area and moment of their application. Thirdly, the legislature adopted the contested provisions without proper assessment. What is more, they are not supported by research-based information or arguments, and the opinion of the affected persons was not heard in the process of adopting them. Hence, they are non-compliant with the principle of good legislation.

13.3. According to *the Saeima*, it is important that assessment of compliance of the contested provisions should take account of the fact that on 12 March 2020 Latvia declared an emergency situation in order to restrict the rapid spread of the Covid-19 pandemic and its possible consequences. This emergency situation is deemed an emergency situation also in the meaning of Article 15 of the Convention and Article 4 of the International Covenant on Civil and Political Rights. During an emergency situation, standards applicable to the legislative process are different. The basic principles to be observed during an emergency situation are established by international fundamental rights.

In the opinion of *the Saeima*, a formal review of actions of the legislature in accordance with the principle of good legislation would be neither practicable nor permissible because an emergency situation in itself requires derogation from this principle. For that reason, the adoption of the Covid-19 Law is to be deemed not only justifiable, but also necessary, urgent and efficient. The seeming grammatical incompatibility of Articles 8 and 9 of the Covid-19 Law can be resolved by systemic interpretation.

Therefore, the Constitutional Court will first examine the arguments with regard to the process of adopting the contested provisions during the

emergency situation, and will then verify other arguments with regard to clarity of the contested provisions and their compliance with the principle of good legislation.

14. The Law on Emergency Situation establishes the procedure for declaring and ending a special legal regime – an emergency situation or a state of exception – and lays down the rights of state administration and local government authorities, individuals and legal entities, as well as restrictions on them, special responsibilities and ensures the rule of law while this legal regime remains in force. Article 4(1) of this Law defines the emergency situation as a special legal regime during which the Cabinet has the right to restrict the rights and freedoms of State administration and local government authorities, individuals and legal entities, as well as to impose additional duties on them. The Law Regarding Declaration of the Emergency Situation lays down restrictions that can be introduced by the Cabinet during an emergency situation. When declaring an emergency situation, the Cabinet may, *inter alia*, suspend observation of specific obligations under international treaties.

Pursuant to Section 4, Section 5(1) and Sections 6(1)(1) and 6(1)(2), Section 7(1) and Section 8 of the Law on Emergency Situation, Section 4(1)(1)(e) of the Civil Protection and Disaster Management Law and Section 3(2) of the Epidemiological Safety Law and based on the announcement made by the World Health Organisation on 11 March 2020 declaring Covid-19 a pandemic, in order to restrict the spread of the virus causing Covid-19, on 12 March 2020 the Cabinet adopted Order No 103 declaring an emergency situation across Latvia effective the date of the Order until 14 April 2020, and rights restrictions and obligations were introduced.

Legal literature admits that regulatory assessment and prevention of risks that exist in an emergency situation requires a multi-layered interdisciplinary decision-making process where scholarly findings must be connected with the assessment aspects. Therefore, the empowerment of the executive is based on the assumption that a flexible administration endowed with scholarly competence is better equipped for adequately making the expected decisions than members of the

parliament (*see: Klafki A. Risiko und Recht. Risiken und Katastrophen im Spannungsfeld von Effektivität, demokratischer Legitimation und rechtsstaatlichen Grundsätzen am Beispiel von Pandemien. Tübingen: Mohr Siebeck, 2017, S. 72, 75*). Given that the democratically legitimised executive (i.e. the government) is able to respond and make necessary decisions quicker in order to mitigate or eliminate a threat and protect the State, the people and the democratic state order, this legal regime enables temporary extension of the powers of the executive to the extent it requires to implement countermeasures efficiently (*see: Levits E. Satversme ārkārtas apstākļos. (The Constitution in an Emergency). Jurista Vārds, 05.05.2020, No 18, pp.6–10*).

It can be concluded that such powers to adopt legal provisions required for the management of an emergency situation granted to the executive by the Law On Emergency Situation is mainly justified by the ability of the executive to act quickly and adopt anticipatory administrative instruments, as well as on interaction between the executive and field experts who are able to assess the risks associated with the emergency situation from the respective scientific point of view, in this specific case that of epidemiology and infectology. In urgent situations when no delay is permissible, powers to take specific steps that under normal circumstances fall within the competence of *the Saeima* are granted to the Cabinet as a numerically smaller and conceptually more unified public authority institution, whereas *the Saeima* would follow the legislative process to adopt the respective decisions. This procedure is in line with the principle of the separation of powers. The Constitutional Court has previously acknowledged that the efficiency of public authority is achieved by means of a mandate that enables a quicker and more adequate response when there is a need to amend legislation because, among other reasons, the Cabinet or other authorised public authorities are more competent in drafting technical provisions and the decision-making process in these authorities is less complex (*cf. paragraph 15 of the Constitutional Court Judgment of 9 October 2007 in Case No 2007-04-03*). Namely, the legislature has established such a mandate in order to mitigate the emergency situation with maximum speed and efficiency, taking account of its multi-layered nature and large scope of

affected persons, as well as the difficulty in anticipating further development of the situation.

On top of that, there are restrictions imposed on the executive: the aim and basis of decisions taken by the executive under this process must be connected with the emergency situation declared in the state, e.g. a threat to public health, mitigation of the situation and restoring 'a normal situation' in the state, restrictions on fundamental rights must comply with the limits determined by the legislature, and they are subject to control by the legislature. Unless the legislature initially provided for restrictions of specific rights in an emergency situation, the Cabinet may not infringe these rights on its own initiative.

Such mandate does not change the status of the parliament as a democratically directly legitimised legislature. The additional powers delegated to the executive only extend its competence and right to act when necessary, but do not diminish the parliament's rights, namely, the parliament also entitles the executive to introduce specific restrictions, while primarily and legitimately retaining these rights for itself. This is also set forth expressly in Section 19 of the Law on Emergency Situation, pursuant to which an emergency situation or a state of exception may not be considered grounds for restricting the competence of the authorities referred to in the Constitution.

Within the scope of legislative powers established by the Constitution, *the Saeima* enjoys unrestricted powers, i.e. it can adopt a law on any aspect (*see: Konstitucionālo tiesību komisija: Viedoklis par iespējamo ministra noteikumu satversmību. (Commission for constitutional rights: an opinion on the constitutionality of prospective ministerial regulations.) Latvijas Vēstnesis, 09.06.2011, No 90, paragraph 24*). If the parliament finds that it can independently resolve an issue connected with the emergency situation with sufficient speed and efficiency, it is entitled to adopt the necessary regulations itself also in an emergency situation. This is one of manifestations of the above mentioned rights of the parliament to control decisions made by the executive during an emergency situation. Likewise, also in an emergency situation, the parliament has an intrinsic right to adopt legislation that is not directly connected with the emergency

situation, along with legislation in connection with mitigating the consequences of the emergency situation.

The legitimate aims of the contested provisions and their applicability for achieving these aims are to be assessed at the subsequent stages of the constitutionality test. That said, *the Saeima* will in all cases be always entitled to adopt legislation aimed at achieving any legitimate aim referred to in the Constitution. There is not a single legitimate aim that can be or has been limited to the competence of the Cabinet, even in an emergency situation. Also in an emergency situation, *the Saeima* – the democratically legitimised legislature – is entitled to adopt any legal provisions that it deems necessary, on condition that they comply with the general principles of law and other provisions of the Constitution.

It follows that the mandate to introduce restrictions of rights necessary to mitigate the emergency situation given to the Cabinet does not in any way affect the right of *the Saeima* to take decisions on the same issues and adopt any legal provisions, insofar as they are in line with the general principles of law and other provisions of the Constitution.

15. In the opinion of the Applicants *SIA Alfor* and *SIA Admirāļu klubs*, when adopting the contested provisions, Latvia had to announce that it exercised the right laid down in Article 15 of the Convention to derogate from observing property rights of individuals and legal entities enshrined in Article 1 of Protocol No 1 of the Convention. Given that this was not done, the contested provisions are non-compliant with provisions of the Conventions, specifically, Article 15 of the Conventions does not apply to them.

The Constitutional Court notes that the case under examination has not been initiated with regard to compliance of the contested provisions with Article 1 of Protocol No 1 of the Convention. Recourse to the derogation clause is connected with the State's international obligations it assumed by joining the Convention, and it does not directly affect the concretisation of provisions of the Constitution.

Furthermore, restricting personal rights in an emergency situation does not necessarily require the State to invoke its derogation rights. The Convention refers

to a number of legitimate aims for the achievement of which the rights established by the Convention may be restricted. The European Court of Human Rights has previously acknowledged considerable rights to interfere in cases where countries adopted regulations in response to ‘unprecedented and exceptional crisis’ without derogation from the Convention (*see paragraphs 34, 37 and 39 of the European Court of Human Rights Decision on 7 May 2013 in Case Koufaki and Adedy v. Greece (dec.), applications Nos 57665/12 and 57657/12*). Also the Human Rights Committee observed that, even during the Covid-19 pandemic, Member States should not derogate from civil and political rights of the International Covenant when they are able to attain their public health or public policy objectives by invoking the possibility to restrict certain rights (*see: International Covenant on Civil and Political Rights. Statement on derogations from the Covenant in connection with the COVID-19 pandemic. Human Rights Committee, 30 April 2020, CCPR/C/128/2, Point 2(c)*). Namely, the State should first of all consider if specific rights can be restricted and then, if it can attain its objectives by restricting the rights or if stricter measures are required.

The rights to property do not belong to the rights that can only be restricted in cases where the entire society is under threat. Restrictions of these rights are also set forth in Article 105 of the Constitution. In such situations, taking account of existing circumstances, the State has a right to choose whether to declare derogation from a specific aspect of the Convention provisions or to ensure that the selected measures completely comply with normally applicable principles of restricting fundamental rights.

On 15 March 2020, Latvia submitted to the Secretary General of the Council of Europe its declaration on derogation from specific aspects of the rights and freedoms guaranteed under Article 8 (the right to respect for private and family life), Article 11 (the freedom to assembly and association), Article 2 of Protocol No 1 (the right to education) and Article 2 of Protocol No 4 (the freedom of movement) for the duration of the emergency situation declared in Latvia (*see: Note Verbale No. EP-3315 from the Permanent Representation of Latvia, dated 15 March 2020, registered at the Secretariat General on 16 March 2020 and withdrawn in the Note Verbale No. EP-10469 of the Permanent Representation of*

Latvia, dated 9 June 2020, registered at the Secretariat General on 10 June 2020). Namely, the right to property was not included in the declaration because the State had decided that measures in respect of this right during the emergency situation did not require a special standard of fundamental rights restrictions and these measures would be fully compliant with the principles of individual evaluation or fundamental rights restrictions test.

Therefore, the introduction of the respective restrictions did not involve the obligation to invoke the derogation clause from Article 1 of Protocol No 1 of the Convention, and the State did not invoke it. If such derogation did not take place, Article 15 of the Convention is not applicable.

Therefore, in this specific case, non-invocation of the derogation clause cannot be construed as violation of provisions of the Constitution and the contested provisions are to be assessed as restrictions of fundamental rights introduced in a normal situation.

16. Having concluded that *the Saeima* did not have to adopt the contested provisions in a special procedure, the Constitutional Court will consider the arguments of other Applicants with regard to the restrictions of fundamental rights introduced by law.

16.1. According to the Applicants, at the time of adopting the contested provisions, no evaluation was made of whether they were necessary and justified, and they were adopted without a proper evaluation procedure. An emergency situation in itself cannot be a reason for the legislature to deviate from the legislative process established by law. The provision of the Rules of Procedure of *the Saeima* whereby draft laws can be declared urgent is the only and greatest deviation from the normal legislative process that is also applicable to legislation adopted during an emergency situation. Finally, Article 9 of the Covid-19 Law contains a note that the restriction established by it is applicable for the entire duration of operation of the Law, and the validity of the restriction is not connected with whether the emergency situation is in force or any other clearly defined term at the expiry of which the restriction is no longer in force. Therefore, the restriction

was introduced for an indefinite period and its duration was not known and could not be anticipated.

According to the Rules of Procedure of *the Saeima*, a significant amount of work related to preparing a draft law prior to its consideration at *the Saeima* meetings is entrusted to *the Saeima* Committees, and it is the task of the responsible committee to ensure that the draft law is comprehensively prepared for consideration by the meeting of *the Saeima* (see paragraph 18 of the *Constitutional Court Judgment of 19 December 2011 in Case No 2011-03-01*).

As follows from the materials related to the discussion of the draft law that included the contested provisions, at the 1st (13th) extraordinary meeting of *the Saeima* of 20 March 2020 the Draft Law was referred to the Responsible Committee which considered it at its meeting. The Draft Law was examined and declared urgent by the 2nd (14th) extraordinary meeting of *the Saeima* of 20 March. The time allocated for proposals for second reading was 15 minutes. 44 proposals were submitted during this time. The Draft Law was examined by the meeting of the Responsible Committee, assessing all submitted proposals (see materials related to the discussion of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19. Available at: www.saeima.lv). Following discussion of the Draft Law and proposals submitted in connection with it, the Responsible Committee submitted them for consideration to *the Saeima* committees. At its 3rd (15th) extraordinary meeting of 20 March, *the Saeima* considered each submitted proposal at second reading, in accordance with the procedure established by the Rules of Procedure of *the Saeima*. The Draft Law was passed by 74 MPs voting 'for' and 1 MP voting 'against' (see the transcript of the Fifteenth (extraordinary) meeting of the Winter Session of the 13th Saeima of the Republic of Latvia).

Adoption of the contested provisions was debated at the meetings of both the Responsible Committee and *the Saeima*. The Prime Minister and the Minister for Economy received a letter from the Gambling Business Association of Latvia presenting the opinion of the Association members about the operation of the sector (primarily in-person gambling) during the emergency situation. The letter

was available to the Responsible Committee before considering the Draft Law at second reading.

Participation of concerned parties in consideration of draft legislation can facilitate making an objective decision and achieving the balance of various interests (*e.g. cf. paragraph 11.1 of the Constitutional Court Judgment of 15 November 2016 in Case No 2015-25-01*). The Constitutional Court has also acknowledged that legislation intended for normal situations is to be properly justified by explanatory research. The legislature also has to consider the risk forecasts by field experts and take timely assessment measures (*see paragraph 18.1 of the Constitutional Court Judgment of 6 March 2019 in Case No 2018-11-01*).

However, the contested provisions were adopted during an emergency situation in Latvia and, as follows from, *inter alia*, the title of the law containing the provisions, they were connected with the cause of the emergency situation, i.e. the Covid-19 pandemic. For that reason, exceptions were permissible also with regard to the notification and justification requirements. Specifically, in a situation when the provision has to be adopted in a very short time frame – and this requirement is characteristic of an emergency situation – the legislature may rely on reasonable assumptions about the expected development of the situation.

Particular attention needs to be given to the precautionary principle, which in a democratic rule-of-law state means that there is no need to wait until actual damage has been done. Justified expectations of the possibility of such damage are sufficient for the State to take efficient and proportionate measures in a timely manner to prevent the damage. In the case of a significant and serious risk to health and well-being of individuals the State has an obligation to take reasonable and appropriate measures even before the onset of negative effects. Namely, in a unique and ambiguous situation, the legislature is entitled to take decisions that, firstly, are based on a reasonable assumption and, secondly, are aimed at the protection of fundamental rights, and the Constitutional Court does not doubt that such assumption was justified.

If the legislature believes that the achievement of specific aims requires urgent action, as otherwise public interests will be significantly damaged, it does

not have to conduct a research on the threat posed by the corresponding damage or hold discussions on preventing the damage that would significantly delay adoption of the decision and compromise its efficiency. To assess whether a specific action was in fact required it is necessary to determine if the restriction had a legitimate aim and if it was proportionate. If the opinion of the concerned parties was not requested in order to expedite adoption of the decision, which resulted in establishing a restriction that had less restrictive alternatives, it can be deemed a violation of the proportionality principle.

What is more, as has also been acknowledged by the Court of Justice of the European Union specifically with regard to gambling, ‘it cannot be inferred that a Member State is deprived of the possibility of introducing a measure restricting gambling, solely on the ground that that Member State is not able to produce studies serving as the basis for the adoption of the legislation at issue’ (*see paragraph 72 of the Court of Justice of the European Union Judgment of 8 September 2010 in Joined Cases C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07*).

It follows that the absence, at the time of adopting the contested provisions, of comprehensive studies or discussions that would have significantly delayed the adoption of the decision and compromised its efficiency cannot be deemed grounds for declaring these provisions illegal.

16.2. According to the Applicants, the restriction was not determined by a duly adopted law because the contested provisions were ambiguous.

Firstly, the two contested provisions are mutually contradictory. The Inspection, which in accordance with Article 9 of the Covid-19 Law was required to suspend all licences to operate gambling, was unable to understand its rights and responsibilities. The adoption of the provisions also prevented the Applicants from planning their operations in the long term. Secondly, it also was not clear at what moment the contested provisions came into force: pursuant to the transitional clauses of the Covid-19 Law, the contested provisions were applicable from the moment the emergency situation was declared, i.e. 12 March 2020. It can be inferred that the contested provisions were to be applied retroactively. Finally, the

duration of restrictions on in-person gambling was unclear because the two contested provisions stated different terms.

The Saeima emphasises that the seeming grammatical incompatibility of Articles 8 and 9 of the Covid-19 Law can be resolved by systemic interpretation, inferring that the prohibition of operating gambling also covered the interactive environment. This interpretation of the contested provisions is also in line with the legislature's will, i.e. support to Article 9 of the Covid-19 Law expressed by the majority of MPs.

With regard to the time of the coming into force of the contested provisions, *the Saeima* notes that the Responsible Committee discussed whether a special provision for the coming into force of Article 8 of the Covid-19 Law was required, but this proposal did not receive the majority support. During consideration of the Covid-19 Law at second reading, *the Saeima* meeting also discussed retroactive application of the Law, but the respective provision was not adopted. Hence, it can be concluded that: the legislature decided that all provisions of the Covid-19 Law, without exception, were to be applied from the moment of announcing the emergency situation. However, the Applicants' licences to operate gambling were suspended by the Inspection pursuant to Article 9 of the Covid-19 Law only on 6 April 2020, i.e. two weeks after the Covid-19 Law came into force. Therefore, retroactive application of the Covid-19 Law did not affect the Applicants' legal position in any way.

The Constitutional Court has acknowledged that in the exercise of its legislative powers *the Saeima* enjoys discretion insofar as general principles of law and other provisions of the Constitution are not violated (*cf. paragraph 25.2 of the Constitutional Court Judgment of 19 October 2017 in Case No 2016-14-01*). In order to assess whether the legislature observed the general principles of law and provisions of the Constitution, it is necessary to examine the case on merits, i.e. to establish if there was violation of the Applicants' fundamental rights. The same discretion applies also to issues of legislative technique (*cf. paragraph 25.3 of the Constitutional Court Judgment of 19 October 2017 in Case No 2016-14-01*). A legal provision may be deemed sufficiently clear and expectable even if understanding the scope of this provision requires a person to seek corresponding

assistance (*see paragraph 18.1 of the Constitutional Court Judgment of 21 February 2019 in Case No 2018-10-0103*).

According to the Applicants, the contested provisions contain mutually contradictory expressions. However, grammatical interpretation is only one of interpretation methods, and it would not be correct to rely solely on the literal meaning of a legal provision. Interpretation of a legal provision requires the use also of other methods of interpreting legal provisions, i.e. the historical, systemic and teleological methods. A provision is deemed unclear if the means of interpretation do not allow to reveal its true meaning (*see paragraph 15.2 of the Constitutional Court Judgment of 30 March 2011 in Case No 2010-60-01*).

It could be understood from materials relating to the adoption of the contested provisions that are publicly available on *the Saeima* website that the legislature wished to restrict operating both in-person and interactive gambling. This is proved in conjunction by MPs' statements during the debates on the adoption of the provisions and on their content (*see debates of the MPs D. Reizniece-Ozola, V. Valainis and J. Stepaņenko about proposal No 16 and debates of MPs J. Stepaņenko, V. Valainis and A. Gobzems about proposal No 17 in the transcript of 20 March 2020 of the Fifteenth (extraordinary) meeting of the Winter Session of the 13th Saeima of the Republic of Latvia*) and the fact that as a result of these debates the parliament voted in favour of Article 9 of the Covid-19 Law which explicitly provides for suspension of operating interactive gambling, being aware of its content and differences from Article 8 of the Covid-19 Law (*ibid., see vote on proposal No 17*). This allows for establishing the content and true meaning of the contested provisions. It follows that the contested provisions cannot be deemed unclear.

The fact that the Inspection took its decision to suspend licences later, wishing to verify the content of the contested provisions first, was in the Applicants' own interests, i.e. it did not cause them additional damage. The same is true in respect of the coming into force of the contested provisions – a reasonable interpreter can infer that it was impossible to close down in-person gambling venues with retroactive effect. No action was required on the part of the Applicants prior to the coming into force of the contested provisions, i.e. they were not fined

or subjected to any other sanctions for continuing the operation of gambling halls before the contested provisions came into force. With regard to arguments concerning the unclear duration of the restrictions, it has been concluded that the Covid-19 Law and the restriction imposed by it lapsed following the end of the emergency situation. This could be expected by the Applicants, taking account of the fact that the Covid-19 Law was connected with the emergency situation and restrictions imposed during this situation. Had the restriction not lapsed following the end of the emergency situation, the issue would need to be examined by assessing the proportionality of the restriction.

It follows that the restriction was determined by a duly adopted law.

17. Each restriction of fundamental rights must be based on circumstances and arguments justifying its necessity, i.e. the restriction is introduced for the sake of important interests – a legitimate aim. If rights are restricted, the institution issuing the contested legislation, in this case – *the Saeima* – is primarily responsible for demonstrating and justifying its legitimate aim to the Constitutional Court (*e.g. cf. paragraph 14 of the Constitutional Court Judgment of 12 March 2020 in Case No 2019-11-01*).

The Saeima emphasises that the restriction of fundamental rights set forth by the contested provisions, particularly in regard of interactive gambling, was introduced in order to protect people addicted to gambling and their families from inappropriate expenses and deterioration of their financial situation during an economic downturn and an emergency situation, as well as to protect the health of people addicted to gambling and prevent them from increasing engagement in gambling. Restrictions on in-person gambling were intended to achieve the same aims. These aims are in line with legitimate aims enshrined in Article 116 of the Constitution, i.e. protecting human rights and public welfare.

The SPKC agrees that both in-person and interactive gambling has a negative effect on human mental health and welfare (well-being), especially in conjunction with particularly difficult conditions and emotional stress caused by the emergency situation.

Another legitimate aim quoted in the additional reasoning of *the Saeima* in connection with the restrictions on in-person gambling is the protection of (physical) public health. Namely, such restriction was required in order to prevent large numbers of people from spending long periods of time in closed spaces (casino halls, gambling halls, bingo halls).

The Constitutional Court has concluded that these protected rights and interests are mutually connected and partially coincide, and therefore should not be considered separately from each other. For instance, it is clear with regard to protection of individuals' health that the legislature was concerned about physical health when it restricted contact between people, as well as mental health when it prevented the increase in addiction. In its turn, the use of an individual's finances (the individual's welfare) is important both from the point of view of household budget and at the national level. What is more, along with aspects of material welfare, the notion of 'public welfare' includes also non-material aspects that are necessary for harmonious operation of society (*see paragraph 3 in Conclusions in the Constitutional Court Judgment of 5 June 2003 in Case No 2003-02-0106*). Individual and public health is a value that plays a distinct role in ensuring public welfare, in both its material and non-material aspects (*see paragraph 17.4 of the Constitutional Court Judgment of 3 May 2012 in Case No 2011-14-03*). Specifically, public welfare is to be considered from both financial and universal perspectives. Hence, the protection of rights of other people and public welfare are to be considered legitimate aims of fundamental rights restrictions established by the contested provisions.

In the opinion of the Applicants, the legitimate aim 'to protect families from inappropriate expenses in financially challenging circumstances' is not in line with the aim defined in Article 1 of the Covid-19 Law, i.e. 'to determine measures for the prevention and suppression of threat to the State and its consequences, special support mechanisms, as well as expenditure directly related to the containment of the spread of Covid-19'. However, the wish of the legislature to introduce measures for the prevention and suppression of negative consequences related to the Covid-19 pandemic, including the consequences of restrictions introduced to reduce the spread of the virus, are directly derived from this aim. Namely, if the

legislature anticipated that the pandemic or restrictions introduced to suppress it would result in a threat to the mental health of people, financial situation or welfare of society in general, it could also have determined the protection of these interests as a legitimate aim, and such action would not have in any way contradicted the aim of the Covid-19 Law. What is more, the legitimate aim of the fundamental rights restriction introduced by each specific provision can in any case differ from general aims of the law containing the respective provisions for reasons of individualisation of the provision.

It can be acknowledged, therefore, that the legitimate aim of the fundamental rights restrictions established by the contested provisions is the protection of rights of other people and public welfare.

18. In establishing whether the restriction of fundamental rights introduced by the contested provisions is proportionate, the Constitutional Court will examine if the restriction is applied to achieve a legitimate aim, if the aim can be achieved with other means that are less restrictive on the fundamental rights of an individual and if the benefit obtained by society from the specific restriction exceeds the damage caused to the individual.

If following the examination of the legal provisions it is found that the fundamental rights restriction contained in them does not comply with at least one of these criteria, the contested provision will be deemed non-compliant with the principle of proportionality and illegal (*see paragraph 20 of the Constitutional Court Judgment of 28 September 2020 in Case No 2019-37-0103*).

19. In examining whether the selected means are applied for the achievement of legitimate aims, the Constitutional Court will verify if the selected means enable achievement of the legitimate aims. Therefore, the Constitutional Court has to establish if the contested provisions, i.e. the suspension of in-person gambling and interactive gambling, enable the protection of the rights of other people and welfare of society as a whole.

With regard to the applicability of the fundamental rights restrictions for the legitimate aims, the Constitutional Court will examine restrictions on in-person gambling and interactive gambling separately.

19.1. The Applicants agree that a ban on in-person gambling may be an appropriate way of restricting the spread of Covid-19. At the same time, the means selected for the achievement of the aim ‘to promote financial caution and prevent the public from inappropriate expenses’ are not appropriate for this aim because people can also spend their money in other ways, such as interactive lotteries, numerical lotteries and instant lotteries, or delivery of alcohol to their homes. What is more, the legislature has no data or any other estimates of the scope of the expected economic crisis, nor data that suggest that restrictions on gambling could reduce the economic crisis. The legislature did not make any assessment as to the way restrictions on gambling could prevent the economic crisis or its consequences and if they could do so at all.

With regard to interactive gambling, the Applicants claim that the restriction was not applied for the achievement of legitimate aims. Interactive gambling is not characterised by and does not require mutual communication between people and their presence in the same space. It means that restrictions on interactive gambling are in no way connected with limiting the spread of Covid-19. Neither was the restriction applicable to the aim of protecting public welfare. Firstly, there are no grounds to conclude that an economic crisis can be expected; furthermore, data on revenue during the previous economic crisis suggest that the statement that ‘people increasingly engage in gambling during an economic crisis’ is wrong. Secondly, as a result of the restriction people are directed to an uncontrolled and unmonitored environment where they are not provided supervision on the part of the public authorities and where there exist no responsible gambling instruments. In this way, people are subjected to even greater risks of excessive expenses. Currently, it is evident that during the restrictions on interactive gambling the market for unlicensed or illegal gambling increased by approximately 12 per cent.

Likewise, actions of the legislature in respect of achievement of the possible legitimate aim is controversial because, on the one hand, interactive gambling is

restricted but, on the other hand, availability of alcohol is promoted by allowing its sales online. Finally, the restrictions introduced by both contested restrictions are not appropriate for the protection of public welfare because these provisions do not prohibit operating draws, lotteries and interactive lotteries, thus unjustifiably creating unequal treatment of gambling operators and operators of draws and lotteries, therefore these provisions do not protect families from inappropriate expenses anyway.

In the opinion of *the Saeima*, the negative consequences incurred by people addicted to gambling during self-isolation (social distancing) take a significant place in the case under examination. The fundamental rights restrictions prevented a dangerous connection between the deteriorating economic situation, a lack of work and social activities and an increasingly active engagement in gambling potentially caused by all these factors. The restrictions of fundamental rights introduced by the contested provisions efficiently prevent people during the emergency situation from inappropriate expenses, in this way facilitating the protection of rights of the people and public welfare. Therefore, the means chosen by the legislature was applied for the achievement of legitimate aims, i.e. the protection of rights of other people and public welfare.

19.2. Infectologist Uga Dumpis has observed that gambling halls are believed to be spaces with a very high risk of the spread of Covid-19 because, *inter alia*, the risk of transmission in closed spaces is significantly higher than in open spaces, gamblers stay in the spaces longer than 15 minutes, equipment surfaces are difficult to disinfect and gamblers may belong to the transmission risk group and may have a tendency to disobey requirements and orders. Also in the opinion of the SPKC participation in various entertainment activities (including gambling in gambling halls) distracts people from observing the necessary safety measures. A study prepared by the Ministry of Health in 2019 states that service, coffee and food offered in gambling halls may be an additional motivation to begin and continue gambling. Namely, gambling halls may be used as meeting places and cafés, with gambling as an additional feature (*see: Putniņa A., Pokšāns A., Brants M. Pētījums par procesu atkarību (azartspēļu, sociālo mediju, datorspēļu atkarība) izplatību Latvijas iedzīvotāju vidū un to ietekmējošiem riska faktoriem.*

Pētījuma gala ziņojums. (A study of the spread of process addiction (addiction to gambling, social media, computer games) among people in Latvia and associated risk factors. Final report.) Riga: Veselības ministrija (Ministry of Health), 2019, p. 85). It can be inferred from the above that, because of various factors, gambling halls can be particularly attractive and people can stay in them for uncontrollably long time periods, even without realising it themselves, thus risking infection with the Covid-19 virus and/or infecting other visitors.

A prerequisite of the functioning of a democratic rule-of-law state is the ability of each individual to self-restrict their selfish freedom and act responsibly (see: *Pleps J. Commentary to Article 116. Book: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. (Balodis R. (acad. ed.) Commentaries to the Constitution of the Republic of Latvia.) Chapter VIII. Fundamental human rights. Riga: Latvijas Vēstnesis, 2011, page 741).* In the emergency situation connected with the spread of the pandemic, it can be expected that people will consider if visiting specific entertainment venues and socialising is necessary. However, if a person has a tendency towards gambling addiction or if a person is already addicted to it they may no longer be capable of objectively evaluating their desire to visit a gambling hall and realising the consequences of this desire, namely, there is a risk that the person may not be able to take an independent responsible decision which, among other things, would meet the interests of public health. Likewise, at a time when other entertainment, culture, recreation and sports venues are closed down, it may seem to people that visiting a gambling hall is the only available recreation and entertainment option.

The restrictions of fundamental rights introduced by the contested provisions prohibited access to gambling halls. Prohibiting people from spending long periods of time in closed spaces together with other people protected them from the risk of infection with the Covid-19 virus both by contact with already infected individuals and indirectly, i.e. from surfaces in the gambling hall. Preventing the infection of gambling hall visitors also reduced the risk of infection with the Covid-19 virus for people coming into contact with them. This allowed to protect the health of gambling hall visitors and people coming into contact with them, and therefore public health in general. What is more, deterring people from

gambling in this way also held them back from spending their money on the respective entertainment.

Therefore, the restriction in question helped reduce the risk of infection with Covid-19 and exposing others to this risk, as well as to limit the possibilities of wasting money in the specific way. Therefore, this restriction was applied for legitimate aims, i.e. the protection of rights of other people and public welfare.

19.3. In a similar way, the restrictions on interactive gambling denied people access to interactive gambling, thus in essence preventing them from spending their money on a specific kind of interactive entertainment. Hence, this restriction was applied to protect individuals' financial situation and thus to foster public welfare.

With regard to the rights of other people, it is necessary to take account of the SPKC opinion to the effect that, irrespective of the environment it takes place in, gambling is associated with a negative impact on mental health and welfare (well-being) of people, especially in difficult and emotionally stressful circumstances characteristic of an emergency situation. In the opinion of the SPKC, decisions taken during the emergency situation were aimed at and applicable to reducing and mitigating both health-related and social consequences of the Covid-19 pandemic.

Specifically, the contested provisions prevented people from spending their time on interactive gambling websites. This limited the trend towards the strengthening of gambling addiction and also reduced the temptation caused by its potential availability. In this way, protection was also provided for the mental health of people, especially those with a strong tendency to the consumption of gambling.

Therefore, also the restrictions on interactive gambling were applied for the achievement of legitimate aims, i.e. the protection of rights of other people and public welfare.

19.4. As regards the issue of why the contested provisions do not cover other potential subjects, i.e. operators of draws and lotteries, it is not in the scope of the assessment in this part of the proportionality test. The condition of the Applicants in comparison with other persons that were intentionally excluded from

the scope of the contested provisions can be evaluated by verifying compliance of the contested provisions with the principle of equality enshrined in the first sentence of Article 91 of the Constitution.

Therefore, the fundamental rights restrictions imposed by the contested provisions are applied for the achievement of legitimate aims, i.e. the protection of rights of other people and public welfare.

20. The fundamental rights restrictions imposed by the contested provisions were required if no other means existed that could be similarly efficient and the application of which would be less restrictive on fundamental rights of persons. A less restrictive means is not any other means but only a means by which the legitimate aim could be achieved with at least the same quality (*e.g. see paragraph 14 of the Constitutional Court Judgment of 7 October 2010 in Case No 2010-01-01*).

In view of potential negative consequences of gambling that affect the individual and society as a whole, the State is allowed greater freedom to regulate this sector than in other sectors (*see paragraph 20.3 of the Constitutional Court Judgment of 16 May 2019 in Case No 2018-17-03*).

20.1. The Applicants state that the legitimate aims could be achieved by a less restrictive method.

With regard to the ban on in-person gambling, the Applicants observe that no equally stringent restrictions were introduced in other business sectors associated with the gathering of people and expenses for purposes unrelated to meeting the basic needs. The Applicants hold that they could meet requirements with regard to distancing and provision of disinfectants introduced in retail and catering venues and that other less restrictive means could have been applied, such as special restrictions on the opening hours in gambling halls, restrictions on the visit duration or amounts spent or a requirement for gambling operators to place in the respective spaces notices on the importance of exercising Covid-19-related and financial caution, additionally emphasising the possibility of registering in the self-exclusion register or offering psychological assistance options. Following the end of the emergency situation, it has also not been proved that the existing restrictions

would not have sufficed to limit the spread of the infection, i.e. that imposing much stricter restrictions specifically on gambling halls in comparison to similar venues of supply of services was justified.

With regard to the restriction on operating interactive gambling, i.e. Article 9 of the Covid-19 Law, the Applicants state that various restrictions promoting responsible gambling were already in place, such as the requirement for the gamblers to set before connecting to an interactive game a maximum betting limit they are allowed in a single game or the maximum total betting limit they are allowed in a 24-hour period. Furthermore, anyone can add themselves to the self-exclusion register, thus preventing themselves from accessing licensed interactive gambling in Latvia. Operators of interactive gambling are under the obligation to notify an individual of the possibility to request exclusion every time the individual connects to their gambling account. In this way, even before the contested provisions were introduced, there existed in Latvia an internationally approved and efficient mechanism for deterring people from excessive gambling. If the legislature was concerned that risks related to financial caution could increase during the emergency situation, it was possible to introduce additional compulsory requirements for gambling operators. Furthermore, the legitimate aim of protecting the health of people already addicted to gambling and to prevent them from increasing engagement in gambling is, in essence, related to the tasks of the legislature that are not directly connected with the emergency situation and circumstances associated with it. With regard to achieving the aim of preventing the engagement of new gamblers in interactive gambling, the legislature could have prohibited registration of new gamblers on interactive gambling sites for the duration of the emergency situation or for a specific period.

It is the opinion of the Applicants that by imposing additional restrictions the legislature could have protected public welfare without complete suspension of their business operations. What is more, in this way the legislature would not have deprived players of interactive gambling of the only alternative to playing on the illegal gambling market that cannot be controlled by the State.

Also, it can be seen from materials related to the adoption of Article 9 of the Covid-19 Law that neither the Responsible Committee, nor *the Saeima*

discussed alternative restrictions. The Latvian Interactive Gambling Association was not allowed the possibility to give its opinion and suggest alternative solutions before the contested provisions were adopted. Moreover, representatives of the interactive gambling sector were not even notified about the intention of the legislature to introduce any restrictions, because the Draft Covid-19 Law was aimed at introducing business support measures rather than introducing new restrictions.

The Saeima notes that, during an emergency situation, opportunities for social activities are restricted to a minimum and, therefore, there were no doubts that the risks associated with the gambling sector, including interactive gambling, were inadequately high. In such a situation it was not possible to achieve the legitimate aims, i.e. to prevent encouragement to spend excessively on gambling and to combat gambling addiction in a situation when it could become exacerbated, in any way other than restricting the availability of gambling (particularly in the interactive environment). Simultaneous reduction of the spread of Covid-19 and economic and social consequences for people addicted to gambling and their families could only be achieved by the fundamental rights restrictions imposed by the contested provisions.

20.2. As has already been acknowledged, restrictions on operating in-person gambling were introduced, *inter alia*, in response to the threat posed to public health by the spread of the SARS-CoV-2 coronavirus and the Covid-19 disease caused by it.

At the time that the contested provisions were being adopted, it was already known that Covid-19 was an infectious disease which spread fast and was contagious even if the infected individual had no symptoms, and for the treatment of which neither vaccines, nor specific medicines were available. Moreover, in many cases the illness was serious and potentially lethal (*see: European Centre for Disease Prevention and Control. Novel coronavirus disease 2019 (COVID-19) pandemic: increased transmission in the EU/EEA and the UK – sixth update – 12 March 2020. Stockholm: ECDC, 2020*).

By March 2020, more than 150 countries had reported Covid-19 cases. The total number of patients globally exceeded 200 000, with more than 8 000 dead.

Furthermore, 80 % of all cases were registered in two regions: in countries of the Western Pacific Region and in Europe (*see: WHO Director-General's opening remarks at the media briefing on COVID-19. 18 March 2020*). The disease and mortality rates continued to grow at an alarming pace.

By mid-March, the risk that in the coming weeks the capacity of EU/EEA healthcare systems would be exceeded because of the spread of the virus was considered high. Healthcare experts claimed that a quick transition to the approach based on containing the virus spread was required because a rapid potential increase in disease cases expected in the coming days to few weeks at the time of adopting the contested provisions might not provide decision makers and hospitals enough time to realise, accept and adapt their response accordingly (*see: European Centre for Disease Prevention and Control. Novel coronavirus disease 2019 (COVID-19) pandemic: increased transmission in the EU/EEA and the UK – sixth update – 12 March 2020. Stockholm: ECDC, 2020*). Therefore, it was decided to delay the spread of the virus as much as possible, attempting, in this way, to limit the number of simultaneous patients and to prevent overload of the healthcare system. It was planned that these aims could be achieved by restricting private, professional and social contacts.

Taking account of the scale of the spread of the SARS-CoV-2 coronavirus and the associated disease Covid-19 across the globe and specifically in Europe known at the time of adopting the contested provisions, as well as the way the virus is transmitted, i.e. by small respiratory droplets when people speak, cough or sneeze, it is beyond doubt that closing down gathering places where people could easily come into contact with others was one of the necessary safety measures to protect the health of visitors of such places and public health in general. This prevented the risk of people infecting each other while staying in the same space, contacting each other and using the same objects. Similarly, it helped prevent chains of infection that could occur while people were on their way to or from entertainment venues, e.g. using public transport.

Since in-person gambling halls during the emergency situation are deemed high risk places, *inter alia*, because of gamblers' tendency to stay longer in gambling halls, they cannot be compared with retail and catering venues that were

subject to less stringent restrictions. Furthermore, even though retail and catering venues are considered crucial for meeting the basic needs of people, owners of such venues and respective services providers were required to encourage customers to refrain from staying in such spaces longer than necessary. At the same time, the possibility of reducing the risks that existed in gambling halls by properly disinfecting the spaces and equipment at the time of adopting the contested provisions was only theoretical and it would not have allowed achieving the legitimate aim with similar efficiency. Regulations with regard to the keeping of distance would have required active involvement of visitors and gambling hall staff responsible for maintaining the order, which obviously would not have been possible. Lighter restrictions would also have been more difficult to control, and respective measures would have required disproportionately high expenses on the part of the State. Finally, it is also important that the restrictions were introduced only for a specific period of time.

The Constitutional Court has concluded that no such alternative means existed that would have imposed less stringent restrictions of fundamental rights of persons in comparison with the restriction on the operation of in-person gambling halls imposed by the contested provisions, while allowing the achievement of the legitimate aim of the restriction in question, i.e. protection of public health, with at least similar quality. In essence, *the Saeima* joined an earlier assessment of the Cabinet with regard to unavailability of alternatives in respect of restrictions on other entertainment venues. Namely, at the time of adopting the contested provisions, the Cabinet, following consultations with experts, had already acknowledged that restricting the spread of the virus would require the closing down of theatres, cinemas and similar venues, and for this reason the same restriction was applicable to similar extent to gambling halls as well.

In view of the means chosen by the legislature for the protection of public health and the fact that this legitimate aim could not have been achieved by less restrictive means, it is concluded that the second legitimate aim of the restriction was achieved in a way connected with the first legitimate aim. Specifically, it would not make sense to examine if public welfare (the financial situation of individuals) can be protected by less restrictive means unless they adequately

protect public health, which in an emergency situation is to be deemed the primary legitimate aim.

Hence, the restrictions of fundamental rights of gambling operators with respect to in-person gambling imposed by the contested provisions are applied for the achievement of legitimate aims, i.e. the protection of rights of other people and public welfare.

21. With regard to the restrictions on interactive gambling, the Constitutional Court agrees that it is important to consider the moment when the contested provisions were adopted.

A considerable part of the public spent unusually much time at home because of job losses, reduced work load, furlough or remote work. What is more, entertainment opportunities at the time were very limited. The emergency situation, therefore, completely changed the daily routine of people, potentially causing confusion as to how to plan their time and what to occupy themselves with. Researchers have observed that, in addition to the economic crisis and uncertainty about the future of the economy, the dramatic change in terms of the length of time spent at home as a result of the pandemic caused the risk of increasing the time spent online, including gambling in the internet (*see: Håkansson A. Changes in Gambling Behavior during the COVID-19 Pandemic — A Web Survey Study in Sweden. International Journal of Environmental Research and Public Health, 2020, 17, 4013*).

It has also been acknowledged that the pandemic, because of social isolation resulting from spacial distancing among other reasons, may have a significant impact on the financial and psychological welfare of individuals and these stressors, in conjunction with changes on the gambling market, may have a significant impact also on people's behaviour, namely, their engagement in interactive gambling may also increase as a result of the stress associated with the pandemic (*see: Håkansson A., Fernández-Aranda F., Menchón Jose M., Potenza, Marc N., Jiménez-Murcia S. Gambling during the COVID-19 crisis – A cause for concern? Journal of Addiction Medicine, 2020, Vol. 14, Issue 4, pp. e10–e12*). Among the pandemic-related factors that are likely to subject people to an

increased risk of unhealthy behaviour and unsuccessful problem solution strategies, including gambling, are mentioned also uncertainty about the future, loneliness, depression and even thoughts about self-injuries caused by social distancing, stress and grief (see: Marsden J., Darke S., Hall W., Hickman M., Holmes J., Humphreys K., Neale J., Tucker J., West R. *Mitigating and learning from the impact of COVID-19 infection on addictive disorders. Addiction, 2020, 115, pp. 1007–1010*). What is more, the suggestion that gambling is often used as a source of positive emotions is supported also by the 2019 study by the Ministry of Health, which among important motivators of online gambling (online gaming machines and casinos) names the feeling of triumph caused by winning, entertainment resulting from the game and the opportunity to relax tension (see: Putniņa A., Pokšāns A., Brants M. *Pētījums par procesu atkarību (azartspēļu, sociālo mediju, datorspēļu atkarība) izplatību Latvijas iedzīvotāju vidū un to ietekmējošiem riska faktoriem. Pētījuma gala ziņojums. (A study of the spread of process addiction (addiction to gambling, social media, computer games) among people in Latvia and associated risk factors. Final report.) Riga: Veselības ministrija (Ministry of Health), 2019, pp. 75, 77*). Therefore, there were reasons to expect that during the pandemic people would look for possibilities of mental escape and beating boredom and stress, among other things, by interactive gambling.

Another important conclusion is that addictive models of behaviour become increasingly more distinct and frequent if the living environment offers few other positive impressions, such as pleasant things and people one can communicate with, and these circumstances are particularly characteristic of the period of social distancing (see: Marsden J., Darke S., Hall W., Hickman M., Holmes J., Humphreys K., Neale J., Tucker J., West R. *Mitigating and learning from the impact of COVID-19 infection on addictive disorders. Addiction, 2020, 115, pp. 1007–1010*). Therefore, the restrictions introduced to combat the spread of the SARS-CoV-2 coronavirus involved the risk that gambling problems might increase for people with existing gambling issues.

On account of travel and gathering restrictions, the emergency situation introduced in connection with the Covid-19 pandemic cannot be compared with

previous financial crises because, even though people's finances may have deteriorated the same way as during the financial crises, the pandemic-related restrictions affected people's daily lives in such a way that interactive gambling may have become one of the few easily accessible entertainment and leisure opportunities, and while engaged in gambling, the players may have no longer exercised appropriate care about saving money.

Another important consideration is that gambling is also a possible way of earning money. In financially challenging circumstances, this argument might encourage people to try their luck and possibly gain significant income. The study by the Ministry of Health already quoted above mentions also this factor – an opportunity 'to win big money' – as a significant motivation for more than 80 per cent of all players (*see: Putniņa A., Pokšāns A., Brants M. Pētījums par procesu atkarību (azartspēļu, sociālo mediju, datorspēļu atkarība) izplatību Latvijas iedzīvotāju vidū un to ietekmējošiem riska faktoriem. Pētījuma gala ziņojums. (A study of the spread of process addiction (addiction to gambling, social media, computer games) among people in Latvia and associated risk factors. Final report.) Riga: Veselības ministrija (Ministry of Health), 2019, p. 73.*). It is also possible that as a result of the imposed travel, gathering and other restrictions some people managed to save money that would normally be spent on transport, outdoor entertainment and other purposes. These amounts of money that suddenly became available, in conjunction with entertainment opportunities lost as a result of self-isolation, could have become an encouragement to engage in gambling.

Namely, changes in people's daily lives brought about by the emergency situation that had both mental and financial impact could have encouraged people who had previously been engaged in gambling to play more often and with higher bets, and could have motivated people who had no previous experience of gambling to try it as a new type of entertainment. People who followed this encouragement could have been subjected to the negative effects of gambling, including mental health issues, such as possible addiction, and financial problems, possibly incurring uncontrollable excessive expenses.

21.1. However, even in the case where the wish of the legislature to introduce restrictions based on the precautionary principle in order to protect the

public or part of it from possible damage is sufficiently justified, the respective decisions must be in line with the Constitution; namely, the chosen means must be necessary for the achievement of the legitimate aim and, additionally, there needs to be assurance that the aim cannot be achieved by other less restrictive means. Even in those cases when the State invokes its right to derogate from specific obligations set forth in international treaties on human rights, the decisions it adopts must comply with the proportionality principle, namely, the chosen means must be the least restrictive of those that can be used to achieve the desired result. Observation of this obligation is particularly important if fundamental rights in an emergency situation are restricted in a normal procedure. The legislature must always comply with the general principles of law aimed at reducing the harm to fundamental rights, democracy and the rule of law.

The Constitutional Court is competent to examine if the legislature, when restricting the fundamental rights of an individual, adequately assessed the availability of alternative means that were less restrictive on the fundamental rights (*e.g. see paragraph 19 of the Constitutional Court Judgment of 30 March 2010 in Case No 2009-85-01*). Likewise, the Court may establish that such alternative means exist (*see paragraph 14.3 of the Constitutional Court Judgment of 4 November 2005 in Case No 2005-09-01*). If it is established that at least one less restrictive means exists, there are reasons to declare that the contested provision disproportionately restricts the fundamental rights (*see paragraph 17.2 of the Constitutional Court Judgment of 23 April 2009 in Case No 2008-42-01*).

In the Applicants' opinion, a less restrictive means could have been chosen for the achievement of the legitimate aims.

Evidently, the above mentioned measures, i.e. a provision whereby the player sets the maximum betting limit they are allowed in a single game or a maximum total betting limit they are allowed in a 24-hour period, as well as other restrictions, e.g. in respect of advertising, were deemed by the legislature insufficient to protect people's health and financial security in an emergency situation. A ban on registering new players on interactive gambling websites during the emergency situation or for a specific period of time would not have prevented the exacerbation of problems of exiting gamblers on whom the

legitimate aim of the restrictions focused specifically. Therefore, part of the alternative measures suggested by the Applicants would not have helped in achieving the legitimate aims with similar efficiency. At the same time, the means of protecting the financial security of families unrelated to the specific restriction that were suggested by the Applicants, such as a ban of alcohol sales or restrictions on the operation of shops selling building materials, are not related to the restriction in question and groups of persons targeted by it.

On the other hand, it can be concluded that the legitimate aims quoted by *the Saeima*, i.e. protecting people from inappropriate expenses and deteriorating financial situation, in the context of interactive gambling require that particularly serious effects of gambling, i.e. potentially uncontrolled consumption of gambling, be prevented. However, Article 9 of the Covid-19 Law prohibited any individual from accessing any kind of interactive gambling irrespective of their mental or financial condition. In essence, the restrictions affected not only the Applicants' but any individual's rights to choose a specific kind of spending their time.

When making decisions that only affect the individual in question, this individual is entitled to making their choice on the basis of information available to them without a direct interference by the State. The individual's freedom of self-determination is the highest value in a democratic rule-of-law state. This freedom applies to any choice of a person, irrespective of whether it might be considered valuable from a socio-ethical point of view or is just a manifestation of the person's individual will, insofar as it does not pose a threat to the rights of other people, the constitutional order or other significant interests of society. The legislature must respect the freedom of the individual's choice and trust the individual's ability to evaluate the consequences of exercising this freedom that may even be manifested as potentially self-harmful action, so far as it affects only the individual in question. The individual must take responsibility for the consequences of exercising their freedom.

There is no reason to believe that spending minimum amounts on specific kind of entertainment would result in deterioration of the individual's financial situation or pose a threat to public welfare. Such a conclusion can only be made if the situation has become unmanageable and expenses are disproportionate to the

individual's income. The same is true of the individual's health, i.e. there are no reasons to believe that a one-time or short-term gambling can be detrimental to the individual's health to the extent that would require interference by the State.

Even in an emergency situation, the legislature must not adopt unjustifiably far-reaching provisions that also affect the rights of those individuals on whom the legitimate aim of the restriction does not focus. Specifically, when adopting a provision aimed at protecting individuals with gambling issues and their families, the legislature had no reason to restrict also the possibilities of all other people to choose the way they want to spend their money and their free time, because such protection was not required for everyone. Taking such decisions for the people amounts to disproportionate paternalistic interference with the right of the people to the freedom of choice and self-determination.

Namely, the achievement of the legitimate aims quoted by *the Saeima* did not require imposing restrictions on the rights of individuals who do not belong to the gambling addiction risk group in the form of a comprehensive ban. Furthermore, without the restrictions on the rights of individuals who did not require protection, the infringement of the rights of business operators would also have been smaller.

It follows that alternative means of achieving the legitimate aims may consist in specific restrictions on operating interactive gambling and a complex of such means that are directly aimed at restricting the amount of time and money spent on gambling websites, i.e. that are more specifically focused on the legitimate aims. Namely, the legislature could have determined a specific number of hours that an individual may spend on interactive gambling websites or the time ('opening hours') when interactive gambling was available, thus preventing gamblers from accessing them in the evening or night hours, for example. This would have mitigated the harmful effects of gambling by preventing people from spending unlimited amount of time on gambling websites based only on their wishes. Likewise, it was possible to impose limits of expenses that gamblers were not allowed to exceed and that did not depend on their wishes. Such limits could be determined, for instance, on the basis of the minimum wage in Latvia or other criteria that would ensure sufficient control to prevent excessive expenses on

gambling that might cause deterioration of public welfare in general. Finally, in conjunction with the above restrictions it was possible to make gambling less attractive, for example, by temporarily prohibiting gambling operators to offer bonuses to their customers.

Namely, the legislature could have set specific and targeted restrictions on gambling operators' activities that were jointly aimed at limiting the availability and attractiveness of gambling without terminating their operation altogether. Furthermore, this would still have allowed to preserve the availability of interactive gambling for people wishing to use them only as a relaxing pastime. The choice to spend part of one's time and money on gambling would have been dependent on the individual's free will rather than persuasion mechanisms, even more so as the time and amount restrictions in place would have prevented people from indulging in gambling.

With regard to individuals already suffering from gaming addiction, it is important whether the legislature had considered previously existing restrictions and possibilities, such as reminders about the possibility to add oneself to the self-exclusion register and about the operation of this register as such, so it could prove that such means might not be sufficient to protect individuals' rights in an emergency situation. Neither has it been proved that prohibiting the operation of interactive gambling was the most efficient way of protecting people already addicted to gambling and that they would not have turned to illegal gambling sites where such individuals are exposed to particular danger. The possibility of implementing focused restrictions, e.g. specific gambling prohibitions for people who at the start of the pandemic had demonstrated a tendency towards addiction implemented in cooperation with the Inspection and operators of interactive gambling, was not considered either, whereas such restrictions could have been used along with proactive psychological help. Protection of people addicted to gambling and help for such people should be a focus for the legislature and the executive in any circumstances, not just in an emergency situation, and should, *inter alia*, take account of long-term consequences of the pandemic.

21.2. Some of the possible measures mentioned above involve specific technical solutions and are therefore more complicated than suspending licences.

However, *the Saeima* had not verified if the solutions in question were technically possible and how quickly they could have been implemented. Namely, it had not been established that such alternatives would have placed a greater burden or require higher expenses specifically for the State or that implementing them would have taken disproportionately long time. What is more, for example, restricting the ‘opening hours’ would not have required any special additional mechanisms.

It is important to emphasise that at the time of passing Article 9 of the Covid-19 Law, *the Saeima* did not consider alternatives to the restriction introduced by this Article altogether. The debates only concerned the dilemma between complete suspension of interactive gambling and permitting it. No possibility was considered of other restrictions that would have been less restrictive on the Applicants and more targeted from the point of view of both business operators’ interests and individuals’ free will, which would therefore have truly ensured protection for people addicted to gambling. While unavailability of an in-depth study with regard to restricting in-person gambling was justified because the speed of taking the decision had a direct impact on the formation of potential chains of spreading the SARS-CoV-2 coronavirus, and people’s health and lives, as well as the stability of the healthcare system directly depended on it, mitigating the psycho-emotional consequences of the pandemic cannot be considered to have been similarly urgent, especially because there was expected a delay in their onset after declaring the emergency situation. Namely, the legislature could have adopted restrictions intended for this aim, for instance, a day later, following a necessary research.

The Constitutional Court has established that the legislature did not consider the availability of a more lenient measure (a complex of measures) that would have been less restrictive on the fundamental rights of persons enshrined in Article 1 and the first and the third sentences of Article 105 of the Constitution, while allowing to achieve the legitimate aims of their restriction, i.e. the protection of rights of other people and public welfare, with the same quality.

It follows that the restriction on interactive gambling is not compliant with the principle of proportionality and therefore Article 9 of the Covid-19 Law, insofar as it requires the Inspection to suspend licences to operate

gambling in the interactive environment and (or) using the intermediation of electronic communications services, is not compliant with Article 1 in conjunction with the first and the third sentences of Article 105 of the Constitution.

22. For that reason, further considerations of compliance of the contested provisions with Article 1 and the first and the third sentences of Article 105 of the Constitution in this Judgment will only examine the restrictions on in-person gambling, namely, the compliance of prohibition of operating in-person gambling set forth in Article 8 and the requirement that the Inspection suspend in-person gambling operation licences set forth in Article 9 of the Covid-19 Law with the principle of proportionality.

In order to verify the proportionality of fundamental rights restrictions it is also necessary to make sure if adverse consequences for a person that result from restrictions of their fundamental rights do not exceed the benefit of the restrictions for society in general. Hence, the Constitutional Court needs to identify the interests to be balanced in the case under examination and to determine those of them that take priority.

In the case under examination, it is necessary to compare the rights of business operators – operators of in-house gambling – to pursue commercial activities and benefit from them, on the one hand, and the rights and interests covered by the legitimate aims of the fundamental rights restrictions imposed by the contested provisions, including the protection of public physical and mental health and financial interests of individuals and families, on the other hand.

Therefore, the Constitutional Court needs to verify if the contested provisions achieved a fair balance of these various rights and legitimate interests.

22.1. The Applicants state that the contested provisions were disproportionate because their application resulted in significant and irreversible damage to operators of in-person gambling. The prohibition in question is to be declared disproportionate in view of the fact that the spread of Covid-19 could also have been restricted in gambling sites by ensuring physical distancing and imposing additional requirements on gambling operators, as well as the fact that

the prohibition of operating gambling would undoubtedly have negative effects for the national economy and encourage the proliferation of illegal gambling.

The Constitutional Court has already established that the rights of other people and interests related to public health play a significant role in the case under examination. The restrictions of fundamental rights imposed by the contested provisions affected specific business operators, whereas the rights and interests protected by the legitimate aim are important for a far wider scope of persons. Namely, the entire society benefited from these restrictions in various ways, because the legislation in question directly protected people from infection and also prevented overload of the healthcare system. Protection of gambling hall visitors from excessive expenses gave an additional benefit for society.

When determining restrictions to be included in the contested provisions, *the Saeima* as a decision-making authority evaluated which of the above interests was to be given priority. In view of the previously mentioned observations on the spread of the virus causing Covid-19 and the threat it posed to the healthcare system, the interests of specific business operators were given lower priority than the interests of society as a whole. The Constitutional Court could only declare the restriction in question disproportionate if it were not suitable for achieving the legitimate aim (*cf. paragraph 20.3 of the Constitutional Court Judgment of 16 May 2019 in Case No 2018-17-03*). However, as noted by infectologist Uga Dumpis, keeping certain establishments open in an emergency situation would require that the related public or economic benefits be very significant. With regard to the alternatives to closing down gambling halls suggested by the Applicants, these have already been found by the Constitutional Court to be unsuitable for achieving the legitimate aims.

In a situation when it was necessary to reduce contacts between people so as to protect public health in this way, the public benefits of restrictions on in-person gambling introduced by the contested provisions exceeded the negative effects for operators of gambling.

22.2. In the opinion of the Applicants, the principle of proportionality was also violated when, by adopting the contested provisions, the legislature did not honour the legitimate expectations established by issuing the licences. Neither did

the legislature make provisions for a reasonable transitional period to allow the Applicants to adapt to the circumstances and ensure complete suspension of gambling operations. Likewise, there were no provisions to compensate the Applicants for restricting their rights to property. Furthermore, when evaluating the proportionality of the restrictions, it is also necessary to take account of the fact that their duration could not be anticipated.

22.2.1. The principle of legitimate expectations is connected with the principle of legal certainty and ensures stability that it requires by prohibiting inconsistent action by the State. This principle is based on the following premise: an individual can rely on legitimate and consistent action by the State, whereas the State must protect the trust placed in it. The principle of legitimate expectations protects a person's rights once they have been obtained, i.e. the person can expect that the rights obtained pursuant to a valid legal instrument will be preserved and enforced during a specific time period (*see paragraph 24 of the Constitutional Court Judgment of 13 November 2019 in Case No 2018-22-01*).

However, the principle of legitimate expectations does not preclude the rights obtained by an individual being amended by legal and legitimate means. Namely, this principle does not establish grounds for expectations that a legal situation determined at a certain point in time will always remain unchanged; on the contrary, it allows and, under certain conditions, even requires changing the existing legislation. Otherwise the State would be unable to adequately respond to changing circumstances. When changing legislation, the legislature must take account of the rights the preservation and enforcement of which may have become subject to a person's expectation (*cf. paragraph 24.2 of the Constitutional Court Judgment of 12 February 2019 in Case No 2019-05-01*).

The licences issued to the Applicants could act as grounds for the Applicants' legitimate expectations that they would be able to continue their business operations in accordance with regulations set forth in the licences and legal provisions governing the gambling sector. In normal circumstances, such reliance on legal provisions that established the validity of the licences would be legitimate, justified and reasonable. However, it should be taken into account that

the contested provisions were adopted during an emergency situation and were directly connected with the need to restrict the spread of the virus.

In March 2020, the number of people infected with the virus causing Covid-19 was gradually increasing, and the situation elsewhere across the world and in Europe had already become critical. This information was available to both the legislature and operators of in-person gambling. In response to the risks posed by the Covid-19 pandemic to people's health and lives, as well as the threat to the entire healthcare system, and taking account of the fact that any delay would have caused additional risks, the legislature had to act fast. Specifically, the State was under the obligation to act promptly and efficiently in order to prevent further spread of the pandemic, thus protecting public health.

It follows that amendments to legislation were necessary in the interests of the entire society.

22.2.2. Transitional provisions are a constituent part of a piece of legislation that regulates various aspects of its coming into force and application in a specific period of time. Hence, transitional provisions are an instrument of legal method by which the originator of the legislation may, *inter alia*, put off the legal effects for a specific period of time or with regard to specific persons. However, the decision whether a law requires transitional provisions is the legislature's discretion. The legislature assesses whether, in the specific case, transitional provisions and, hence, a transitional period are required prior to the date the new legislation comes into effect (*cf. paragraph 18.2.1 of the Constitutional Court Judgment of 29 April 2015 in Case No 2014-31-01*).

The Constitutional Court has already acknowledged that protection of significant public interests may be given priority over the principle of legitimate expectations (*see paragraph 25 of the Constitutional Court Judgment of 26 November 2009 in Case No 2009-08-01*). Therefore, the need for a new legislation may be given priority to balance individual and public interests (*see paragraph 9.2 of the Constitutional Court Judgment of 29 April 2015 in Case No 2014-31-01*).

Inclusion of transitional provisions in the law or delaying the coming into force of the restrictions would not have allowed sufficiently prompt and effective

response because there would still have been potential threat to public health and human rights during the transitional period. Namely, with each day that active contacts between people were allowed in entertainment venues, including gambling halls, the number of infections would potentially have increased.

Therefore, providing for a transitional period before restrictions on in-person gambling came into force would not have been reasonable and the legislature was under no obligation to make such provisions.

22.2.3. The suspension of the Applicants' licences is to be considered as restrictions of their property rights rather than alienation of property. Namely, it does not follow from Article 105 of the Constitution that compensation is required if such restrictions are introduced, even though the existence of compensation is a factor to be taken in consideration in assessing whether the restriction has been proportionate (*see paragraph 91 of the European Court of Human Rights Grand Chamber Judgment of 29 March 2010 in Case of Depalle v. France, Application No 34044/02*).

Despite the fact that no such compensation was provided directly, the Cabinet made provisions for mechanisms to alleviate the consequences of restrictions introduced during the emergency situation. The staff of gambling operators could receive furlough benefits, i.e. employees who were out of work were, in accordance with the procedure and amount established by the Cabinet, compensated up to 75 per cent of their average monthly wage earned over the previous six months, not exceeding 700 euros per calendar month. According to the information on the website of the State Revenue Service, some of the Applicants used this possibility (*see Kopsavilkums: darba devēji, kuru darbinieki saņēmuši dīkstāves pabalstu (Summary: employers whose staff received furlough benefits)*). Available at: <https://www.vid.gov.lv/>). In this way, the Cabinet made sure that employees who were unable to work and receive wages at a specific moment because of the restrictions imposed by the contested provisions could retain their income. Likewise, gambling operators were given the possibility to divide or postpone tax payments for up to three years from the application date and to request a deadline extension for the payment of tax arrears that had already been extended pursuant to the Law on Taxes and Duties. According to the statistics of

the State Revenue Service, some of the Applicants also used this mechanism. Other State support instruments were also available, e.g. rent discounts in State and local government properties.

The restrictions on in-person gambling were in force only between 22 March and 10 June 2020, i.e. for less than three months. Taking account of the fact that the spread of the virus causing Covid-19 and the efficiency of restricting this spread did not depend on the legislature and could not be anticipated in any way, the lack of a specific end term of the restrictions in the contested provisions was permissible. Furthermore, following the end of the emergency situation the Applicants could fully resume their business operations.

The Constitutional Court has concluded that the public benefit from the restrictions of fundamental rights at the time of the emergency situation in Latvia exceeded the negative consequences incurred by specific persons as a result of these restrictions, even more so as means mitigating these restrictions were available to the Applicants.

Therefore, the restrictions on in-person gambling comply with the principle of proportionality. Hence, Article 8 of the Covid-19 Law and Article 9 of this law, insofar as it restricts operation of in-person gambling halls, comply with Article 1 and the first and the third sentences of Article 105 of the Constitution.

23. The Applicants also requested that compliance of the contested provisions with the principle of equality enshrined in the first sentence of Article 91 of the Constitution be assessed.

If a contested provision is found by the Constitutional Court to be non-compliant with at least one Article of the Constitution, this provision is to be declared illegal and void (*see paragraph 15 of the Constitutional Court Judgment of 21 February 2018 in Case No 2017-11-03*). Since Article 9 of the Covid-19 Law, insofar as it restricts interactive gambling, has been found non-compliant with Article 1 of the Constitution in conjunction with the first and the third sentences of Article 105 of the Constitution, it is no longer necessary to assess compliance of this provision with Article 91 of the Constitution. However, it is

necessary to assess compliance of restrictions on in-person gambling, i.e. Article 8 of the Covid-19 Law and Article 9 of this law, insofar as it restricts operation of in-person gambling, with the first sentence of Article 91 of the Constitution.

The Constitutional Court has on numerous occasions acknowledged that the task of the principle of equality enshrined in the first sentence of Article 91 is to ensure meeting the prerequisite of a rule-of-law state whereby the laws inclusively cover all persons and the law is applied without any privilege (*e.g. cf. paragraph 7 of the Constitutional Court Judgment of 2 February 2010 in Case No 2009-46-01*). However, it does not amount to levelling but requires equal treatment of persons in genuinely equal and comparable circumstances. Namely, the principle of equality allows and even requires different treatment of persons whose circumstances differ, and it also allows different treatment of people whose circumstances are equal if there are objective and reasonable grounds for such treatment (*e.g. see paragraph 15 of the Constitutional Court Judgment of 23 November 2015 in Case No 2015-10-01*).

Therefore, in assessing whether the contested provision complies with the first sentence of Article 91 of the Constitution, the Constitutional Court needs to establish the following:

- 1) if and which persons (groups of persons) are comparable and if they are in equal or comparable circumstances;
- 2) if the contested provision equally treats persons that are in different circumstances or treats differently persons that are in equal circumstances;
- 3) if such treatment is determined by a legal provision adopted in a procedure established by legislation;
- 4) if there exist objective and reasonable grounds for such treatment, i.e. if it has a legitimate aim and if the principle of proportionality has been observed (*see paragraph 8 of the Constitutional Court Judgment of 2 November 2020 in Case No 2020-14-01*).

24. In assessing a possible infringement of the principle of equality enshrined in the first sentence of Article 91 of the Constitution, the Constitutional Court primarily needs to verify if the groups of persons under comparison are in

equal and mutually comparable circumstances. Establishing this requires identifying the main unifying feature of the group under comparison (*e.g. cf. paragraph 11 of the Constitutional Court Judgment of 10 July 2020 in Case No 2019-36-01*). No two situations are completely identical. Therefore, for the purposes of comparison it is necessary to choose a situation where one or several elements are in common with the situation under examination. The common element must unite the two situations under the same umbrella term (*see paragraph 7 of the Constitutional Court Judgment of 4 January 2007 in Case No 2006-13-0103*). Furthermore, the Constitutional Court also needs to assess if there are any significant considerations indicating that these groups of persons are not in mutually comparable circumstances (*cf. paragraph 17.2 of the Constitutional Court Judgment of 9 April 2013 in Case No 2012-14-03*).

24.1. The applicants state that the following groups are in equal and, according to specific criteria, comparable circumstances:

- 1) operators of gambling and lotteries, including those operating interactive gambling and lotteries;
- 2) operators of gambling and other business operators that in their own name engage in for-profit commercial activities consisting in the provision of services or the selling of goods in premises intended and specially equipped for the specific type of commercial activities where in-person presence and gathering of clients is possible and where special staff is used for the provision of services or the selling of goods.

With regard to the first group under comparison specified by the Applicants, *the Saeima* notes that *VAS Latvijas Loto* is permitted to operate lotteries, including interactive lotteries. In accordance with the case law of the European Free Trade Association Court and the Court of Justice of the European Union, it can be reasonably believed that the legitimate aim, i.e. combating gambling addiction, can be more easily achieved by the State if the sector in question is operated by a single monopoly rather than numerous private enterprises. Furthermore, the State is able to monitor and control the operation of an enterprise owned by it better than the operation of numerous private commercial services providers. Therefore, interactive instant lotteries, which are operated by *VAS Latvijas Loto*, were not

restricted because the State was able to achieve its aims set during the emergency situation without introducing specific restrictions in the Covid-19 Law. Assessing whether the legitimate aims set by the State merit a complete or partial ban on gambling and betting, or they should only be restricted with supervisory mechanisms is at the discretion of the State.

Furthermore, it is claimed that restrictions imposed on the gambling sector may not be assessed separately from negative moral and financial effects caused by gambling to individuals and society in general. It should be noted in this respect that revenue from the operations of *VAS Latvijas Loto* is directed to the national budget. In this way support is provided to solving various important social issues. This is especially important in an emergency situation, given the State's responsibility to reduce and prevent consequences of the Covid-19 pandemic. It follows that persons (groups of persons) specified by the Applicants are not in equal and, according to specific criteria, comparable circumstances.

As the Applicants provided their arguments on various aspects of possible non-compliance of the contested provisions with the principle of equality, the Constitutional Court needs to assess the contested provisions in the context of each of these aspects.

24.2. In order to verify if the first groups specified by the Applicants – gambling operators and lottery operators, i.e. *VAS Latvijas Loto* – can be compared and are in equal and comparable circumstances, the Constitutional Court will consider both the type of their business activities and differences and similarities of the services they provide. Furthermore, since the verification of compliance with the principle of equality only concerns restrictions on in-person gambling, only operators of this type of gambling will be included in the group for comparison.

Pursuant to the Law on Gambling and Lotteries, gambling is a game in which an individual may acquire a prize fully or partially dependent on chance or circumstances that cannot be known in advance, by depositing a bet. The following types of gambling may be operated in the Republic of Latvia: gaming machine games, roulette (cylindrical game), card games, dice games, wagers, betting, bingo, games of chance via telephone. Lottery is a game which has the nature of an agreement of chance in which the prize acquired by the participant is fully or

partially random. Types of lottery include money and goods lottery, numerical lottery, and instant lotteries.

Various similarities can be identified between gambling and lotteries. Firstly, all these games are based on a monetary deposit made by the player. Secondly, the likelihood of winning to a greater or smaller degree depends on chance. Thirdly, operating both gambling and national lotteries and instant lotteries requires a licence issued by the Inspection. It is also recognised that both gambling and lotteries can be addictive. Therefore, *prima facie*, all types of gambling and lotteries need to be compared.

However, significant differences between in-person gambling, on the one hand, and prize draws and lotteries, on the other hand, can also be identified. For instance, the difference is manifested in the type of game, whether the individual willing to engage in the game needs to visit a specific venue (in the case of in-person gambling), whether the fact of winning becomes known immediately (prizes in numerical lotteries are drawn once or twice a week, whereas in interactive gambling, scratch off card games and games played in gaming halls the fact of winning can become known instantly), the amount of the required deposit and other factors. The importance of the chance factor also differs: in some games, e.g. card games, the result can still depend on the player's skills, whereas success in betting is based on the ability to evaluate the chances of a win, as well as actions of other people, and other factors.

Similarly, even a superficial comparison of the type of gambling represented by the Applicants (i.e. gaming machines) and lotteries reveals numerous significant differences in the form of the game and engagement. The Competition Council has arrived at similar conclusions and emphasised that visitors of gambling halls are attracted, to a great extent, by the opportunity of personal contact with the staff, the atmosphere of gambling halls, the environment with gaming machines and availability of the bar.

Therefore, in-person gambling, on the one hand, and traditional numerical lotteries and instant lotteries, on the other hand, are not comparable because there are numerous significant differences between these types of games. Neither are their operators' circumstances comparable by specific criteria. It follows that

operators of in-person gambling and operators of lotteries cannot be considered comparable groups in the meaning of Article 91 of the Constitution.

24.3. Likewise, the second groups specified by the Applicants, i.e. gambling operators operating gambling halls and other business operators, cannot be considered comparable in the meaning of Article 91 of the Constitution. Such comparison is excessively broad and covers business operators essential for meeting the basic needs of people (catering enterprises), whereas gambling is a type of entertainment. Furthermore, spaces used to provide the services differ by such criteria as, for instance, mutual contacts and distance between people, reasons for visiting the respective establishment, as well as psychological attractiveness of the establishments and the duration of time spent in them. Specifically, even though the provision of services may be the common element for both groups, the differences between the two groups are too numerous to consider their circumstances equal and comparable.

Operators of in-person gambling and VAS *Latvijas Loto* or other business operators are not in comparable circumstances. Consequently, restrictions on in-person gambling comply with the first sentence of Article 91 of the Constitution.

25. Pursuant to Section 32(3) of the Constitutional Court Law, a legal provision declared by the Constitutional Court non-compliant with a legal provision of superior legal force is to be deemed void as of the date of publication of the Constitutional Court Judgment, unless the Constitutional Court provides otherwise.

The Applicants operating interactive gambling have requested that Article 9 of the Covid-19 Law be declared void from the moment of infringement of the fundamental rights. Furthermore, on 13 July and 5 October 2020 the Constitutional Court received letters of the Administrative District Court stating that the Administrative District Court terminated proceedings on partial annulment of the Inspection Decision No 2020/0161 of 6 April 2020 suspending licences to operate gambling. It cannot be excluded that some other person may have wished

to protect their rights infringed by Article 9 of the Covid-19 Law in the administrative court.

The Constitutional Court has already acknowledged that a decision with regard to the moment when a contested provision (regulation) becomes void needs to be made taking account of the fact that its task is to prevent infringement of the Applicant's fundamental rights to the extent possible (*see paragraph 25 of the Constitutional Court Judgment of 16 December 2005 in Case No 2005-12-0103*). In order to prevent, to the extent possible, the negative consequences of the application of the contested provisions incurred by interactive gambling operators, Article 9 of the Covid-19 Law, insofar as it requires the Inspection to suspend licences to operate gambling in the interactive environment and (or) using the intermediation of electronic communications services, is declared void in respect of these operators from the moment of infringement of their fundamental rights, namely, the adoption of the Inspection Decision No 2020/0161 of 6 April 2020 suspending licences to operate gambling.

Substantive Part

Pursuant to Sections 29–32 of the Constitutional Court Law, the Constitutional Court

held:

1. To terminate the court proceedings in the part referring to compliance of Article 9 of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 with Article 49 of the Treaty on the Functioning of the European Union.

2. To declare Article 8 of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19 and Article 9 of this law, insofar as it restricts in-person

gambling, compliant with Article 1, the first sentence of Article 91 and the first and the third sentences of Article 105 of the Constitution.

3. To declare Article 9 of the Law on Measures for the Prevention and Suppression of Threat to the State and Its Consequences Due to the Spread of Covid-19, insofar as it requires the Inspection to suspend licences to operate gambling in the interactive environment and (or) using the intermediation of electronic communications services, non-compliant with Article 1 in conjunction with the first and the third sentences of Article 105 of the Constitution and void in respect of operators of interactive gambling from the moment of infringement of the fundamental rights.

The judgment is final and not subject to appeal.

The judgment enters into force on the day of its publication.

Chairperson of the court hearing

Sanita Osipova