



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

On behalf of the Republic of Latvia

Riga 13 November 2021

Case No 2018-18-01

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

upon receipt of a constitutional complaint by person B (hereinafter referred to as the Applicant),

on the basis of Article 85 of the Constitution of the Republic of Latvia and Paragraph 1 of Section 16, Paragraph 11 of Section 17(1), Sections 19.² and 28.¹ of the Constitutional Court Law,

on 13 October 2021, in the written procedure, reviewed the case

“On Compliance of Section 14.¹(2) of Road Traffic Law with Article 96 of the Constitution of the Republic of Latvia”.

The Establishing Part

1. On 1 October 1997, the Parliament of the Republic of Latvia adopted the Road Traffic Law, which entered into force on 4 November 1997.

On 26 May 2005, the Parliament adopted the law Amendments to the Road Traffic Law which entered into force on 29 June 2005. By Section 14 of this Law, Section 14.¹(2) of the Road Traffic Act was amended to read as follows:

“Information on a vehicle owned by a legal person, on the rights of a person to drive vehicles, on the fines imposed on a person for offences in road traffic which have not paid within the time period specified in the law, and also any other information contained in the State Register of Vehicles and Drivers Thereof shall be treated as generally accessible information.”

On 12 April 2018, the Parliament adopted the law Amendments to the Road Traffic Law, which entered into force on 10 May 2018. By Section 3 of this Law, the wording of Section 14.¹(2) of the Road Traffic Law was amended as follows:

“Information on a vehicle owned by a legal person, except for the information specified in Paragraph one of this Section, on the rights of a person to drive vehicles, on the fines imposed on a person for offences in road traffic which have not paid within the time period specified in the law, and also any other information contained in the State Register of Vehicles and Drivers Thereof and the State Information System of Tractor-type Machinery and Drivers Thereof shall be treated as generally accessible information.”

2. The **Applicant** holds that Section 14.¹(2) of the Road Traffic Law (hereinafter – the contested provision) is incompatible with Article 96 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

The State Joint-Stock Company ‘Road Traffic Safety Directorate’ (hereinafter also – the Directorate) has registered eight penalty points in the name of the Applicant in the State Register of Vehicles and Drivers Thereof. This information has been made available to a number of merchants for re-use and can be accessed by anyone for a fee.

The information contained in the State Register of Vehicles and Drivers Thereof on the penalty points imposed on the Applicant is to be regarded as personal data, while the storage, acquisition, use and transfer thereof as data processing within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter –

Regulation 2016/679). The Directorate is to be regarded as the controller for the processing of that data, however, pursuant to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, as amended by Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 (the amended Directive hereinafter – Directive 2003/98/EC), it is not allowed to reuse the information on the penalty points imposed on a person for road traffic offences. This information contains personal data and should therefore have a restricted status.

The information on the penalty points contained in the State Register of Vehicles and Drivers Thereof constitutes personal data relating to convictions for administrative offences and as such falls within the scope of Article 10 of Regulation 2016/679. Personal data on administrative convictions may be processed only by persons and in cases provided for by law, however, the Directorate has no such right.

3. The institution which issued the contested act , the **Parliament**, holds that the contested provision complies with Article 96 of the Constitution.

The contested provision restricts the rights of a person enshrined in Article 96 of the Constitution; however, this restriction is established by law and has a legitimate aim, i.e. protection of the rights of other persons and public security.

The contested provision is suitable for achieving the legitimate aim of the restriction of the fundamental rights contained therein, since on its basis both passenger carriers and taxi service providers obtain information on the penalty points imposed on drivers of vehicles and are thus able to assess whether a particular driver can be entrusted with the carriage of passengers. This reduces risks to road safety. Moreover, the contested provision has a preventive function, since any driver of a vehicle is motivated not to commit serious infringements of road traffic rules, so that information on the penalty points imposed on them does not become available, for example, to their employer, if they work as a driver.

The legitimate aim of the restriction of fundamental rights contained in the contested provision cannot be achieved by other means less restrictive of the rights

and legitimate interests of a person. In particular, that objective cannot be achieved by denying or substantially restricting access to information on the penalty points. The restricted information status of information on a penalty points imposed on a person would impose a disproportionate burden on the Directorate, which would have to invest additional resources in assessing the validity of requests for information. The alternative of asking the drivers of vehicles themselves for a statement of the registered penalty points also is not appropriate, as this information has to be checked on a regular basis. Moreover, the processing of personal data provided for in the contested provision complies with the principles of personal data protection – respect for the rule of law, fairness, minimality and anonymity, therefore the benefit obtained by the society outweighs the restriction of the rights of the Applicant.

4. The invited person – the Ministry of Justice – holds that the contested provision proportionately restricts the right of a person to inviolability of private life enshrined in Article 96 of the Constitution and complies with the provisions of Regulation 2016/679 on lawful processing of personal data.

Penalty points are the information about the drivers of vehicles entered in the State Register of Vehicles and Drivers Thereof. This information is stored in the register for as long as it is relevant and is linked to the driver's personal identification number. It is generally accessible information that can be obtained by any person if they know another person's identifying information – their personal identification number. Penalty points therefore constitute personal data and are subject to the requirements of Regulation 2016/679. The legal basis and purpose of data processing is laid down in Article 43.¹ of the Road Traffic Law, namely: to influence the behaviour of drivers of vehicles, promoting safe driving and the conformity with the laws and regulations in road traffic, and also to lessen endangering human life, health, and property as much as possible. This ensures compliance with the principles of 'lawfulness' and 'purpose limitation' of the processing of personal data. Paragraphs 6 and 7 of Cabinet Regulation No 551 of 21 June 2004 Regulations on the Application of the Demerit Point System

(hereinafter – Regulation No 551) lay down the limitation period after which the penalty points are deleted and thus the principles of data processing ‘accuracy’ and ‘storage limitation’ are respected.

In order for a third party to obtain information on the current penalty points imposed on a data subject, it must know the data subject's identifying information – their personal identification number. Information on the penalty points is not published automatically and is not made available to the public. The information which is generally accessible – upon identification of the data subject – is the number of penalty points imposed on a given data subject, and not other information identifying the data subject. The principles of ‘data minimisation’ and ‘integrity and confidentiality’ are thus respected. Moreover, penalty points cannot be considered as personal data relating to convictions for administrative offences, as they are not a separate type of administrative penalty.

The restriction of the fundamental right contained in the contested provision is established by the Road Traffic Law and has a legitimate aim – protection of public safety. The appropriateness of such a restriction for the achievement of the aforementioned objective should be assessed by analysing the statistical information on the reduction of road traffic offences and road traffic accidents after the adoption of the contested provision. This objective cannot be achieved by means less restrictive of the fundamental rights of the individual, since, for example, the establishment of a restricted information status for information on a person's penalty points would place a disproportionate burden on the Directorate, requiring it to assess the validity of requests for information.

5. The invited person – the Ministry of Transport – agrees with the opinion voiced in the written reply of the Parliament and holds that the contested provision complies with Article 96 of the Constitution.

Latvia has historically had, and continues to have, a difficult road safety situation. This is reflected in the high number of people injured and killed in road accidents. One of the measures with a real positive impact on the road safety situation, as well as on public interest and safety, is not only the registration of

penalty points *per se*, but also the availability of the information on the penalty points imposed on a person. Members of the public have the right to know which drivers of vehicles have repeatedly committed serious road traffic offences.

The registration of penalty points cannot be separated from the availability of the information registered, since only the combination of these two measures ensures the achievement of the objectives of the demerit point system, namely, the identification of systematic, serious and abusive traffic offenders and the preventive influence on the behaviour of road users. The availability of this information is said to prevent drivers, who do not want information about them as systematic, abusive and serious traffic offenders to be generally accessible, from reoffending.

The contested provision ensures the right to access to information guaranteed to the public by Article 100 of the Constitution and, in particular, the right to access to information which is aimed directly at the protection and security of the public and personal rights. Any restriction of a person's fundamental rights contained in the contested provision is objectively necessary to solve the problems present in the field of road safety and to ensure public safety.

6. The invited person – the Data State Inspectorate – points out that the significance and purpose of the data processing carried out on the basis of the contested provision is not clearly identifiable at the moment, therefore the restriction of fundamental rights included in the contested provision does not have a legitimate aim and is not proportionate.

Information on the penalty points imposed on a person is to be regarded as personal data and part of the private life of that person. Moreover, these data relate to a person's convictions and administrative offence record and are therefore subject to special protection. However, the purpose of the processing of personal data provided for in the contested provision is not clear. Moreover, the reference in the written reply of the Parliament to the preventive nature of the contested provision and the statistics reflecting positive trends, i.e. a decrease in the number of road traffic accidents, does not make it clear whether the decrease in the number of road traffic accidents is related to the introduction of the demerit point system *per se*, or

to the fact that information on the penalty points imposed on a person is generally accessible.

7. The invited person — the Ombudsman — holds that the contested provision complies with Section 96 of the Constitution.

Information on the penalty points imposed on a person constitutes personal data, and disclosure of that information to third parties constitutes processing of personal data. This processing of personal data restricts the individual's right to inviolability of private life. The restriction of the fundamental right in question is established by law and has a legitimate aim – the protection of public safety and the rights of others.

A situation where any person has access to the information on the penalty points imposed on another person allows for automated decision-making and profiling. This is important because the information in question allows to judge a person's behaviour and testifies that the person has been administratively punished for road traffic offences.

The Parliament, while providing exhaustive justification of the legitimate aim of the contested provision, does not indicate a direct correlation between the public availability of penalty points and the improvement of road safety in Latvia. The fact that third parties can obtain information on the penalty points imposed on a person does not guarantee that the person will actually improve their driving culture, nor does it guarantee that a person with multiple penalty points will no longer participate in road traffic. For that reason, there is no pressing need of the public to ensure that anyone interested has the right of access to that information. Moreover, there is no evidence that, once the information on the penalty points imposed on a person would be given a restricted status, the demerit point system would stop fulfilling its preventive function.

8. The invited person – *Mg. iur.* Agnese Boboviča – considers that the information on the penalty points imposed on a person is subject to the requirements of Article 10 of Regulation 2016/679.

Information on the penalty points imposed on a person shows that they have been administratively punished for road traffic offences. This information constitutes personal data, and under Article 10 of Regulation 2016/679, the processing of such personal data is permissible only under the control of official authority or when processing is authorised by European Union or Member State law and where appropriate safeguards for the rights and freedoms of data subjects are provided. In the present case, the Directorate can be recognised as an official authority, but it is questionable whether the Directorate controls the use of information under its supervision in compliance with the requirements of Regulation 2016/679.

The arguments of the Parliament mentioned in the written reply on the positive impact of the general accessibility of the information provided for in the contested provision on road traffic are questionable, as each request for information requires the payment of a fee. Moreover, the reason for the improvement in the road traffic situation since 2005 is to be attributed to the introduction of the demerit points system in itself, rather than to the general accessibility of the relevant information provided for in the contested provision. It is questionable whether the legislator has assessed the scope of the processing of personal data necessary to achieve the stated objective of improving road safety.

Such a situation that information on vehicles owned by a person according to Section 14.¹(1) of the Road Traffic Law is restricted information and the legislator has set preconditions for its receipt, including the requirement to identify the recipients of the information, while, according to the practice of application of the contested provision, information entered in the register on the penalty points imposed on a person and their unpaid fines is generally accessible information, is absurd. Information on convictions and offences may put the rights and freedoms of the data subject at much higher risk than information on whether a person owns a vehicle.

9. The invited person – L.L.M. Katrīne Pļaviņa – holds that the contested provision does not comply with Article 96 of the Constitution.

Article 96 of the Constitution must be specified in conjunction with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and the requirements of Regulation 2016/679. Information on the penalty points imposed on a person is personal data within the meaning of Regulation 2016/679, and, by providing for the status of generally accessible information for that information and allowing its disclosure, the contested provision restricts the right to inviolability of private life of drivers and keepers of vehicles.

Until the day when Regulation 2016/679 became applicable, the Parliament was obliged to assess the proportionality of data processing as provided for in the laws and regulations it had adopted, and the necessity therefor in a democratic society. However, there is no confirmation that the Parliament, prior to the initiation of the present case, had assessed the compliance of the contested provision with the right to inviolability of private life.

The objective of the contested provision to ensure road traffic safety is legitimate; however, the fact that the contested provision places the control of road traffic safety in the hands of the public, inter alia, by allowing transport, logistics and other enterprises, as well as parents with young children, to exclude from driving such persons who have a record of penalty points, is inconsistent with the essence of state functions, is absurd and proves the excessiveness of the restriction. The demerit point based system already implies negative consequences for road traffic offenders, such as exclusion from road traffic and checks on road safety knowledge. The Parliament has not provided any explanations or research data that would show that the public availability of the penalty point records has a decisive or significant impact on road safety. Consequently, the contested provision does not contribute to road safety and is not necessary for the selection of personnel to be involved in work with vehicles.

10. The invited person – *Mg. iur. Signe Plūmiņa* – considers that the contested provision is contrary to Regulation 2016/679.

The information on unpaid fines imposed on a natural person for road traffic offences, as well as other information included in the State Register of Vehicles and Drivers Thereof, as set out in the contested provision, is to be considered personal data within the meaning of Regulation 2016/679. However, the disclosure of such data to other persons, including legal persons, for the purpose of re-use constitutes processing of personal data.

By imposing on the controllers, including the Directorate, the obligation to disclose the information set out in the contested provision, the legislator was obliged to ensure a balance between the interests of all, namely the public and the data subjects, in accordance with Article 96 of the Constitution and Article 8 of the Convention.

In assessing the compatibility of a provision with the data protection principles reflected in Article 5 of Regulation 2016/679, the assessment of proportionality against the factors identified by the European Court of Human Rights constitutes a particularly important criterion. In its reply, the Parliament has provided information on a pressing social need – improving road safety – but has not provided sufficient information and evidence to substantiate its opinion. In particular, it does not follow from the written reply of the Parliament that it is not the introduction of a demerit point system *per se* that improves road safety in Latvia, but the general accessibility of the relevant information. This attests to the fact the measure selected is not suitable for achieving legitimate aim.

The information on the penalty points imposed on a natural person refers to the processing of personal data relating to convictions and offences or related security measures within the meaning of Article 10 of Regulation 2016/679. The contested provision allows personal data on the registered penalty points to be processed – disclosed to an unspecified circle of persons. However, the Parliament has not provided information on the additional safeguards or protective measures provided for by law as stipulated in Article 10 of Regulation 2016/679.

11. On 4 June 2019, the Constitutional Court, hearing the case in a written procedure, adopted a decision to refer questions for a preliminary ruling to the Court

of Justice of the European Union and to suspend the proceedings in the case until the decision of the Court of Justice of the European Union enters into force.

The Constitutional Court asked following questions the Court of Justice of the European Union:

“1.1. Must the expression “processing of personal data relating to criminal convictions and offences or related security measures”, used in Article 10 of Regulation 2016/679, be interpreted as meaning that it includes the processing of information relating to penalty points recorded against drivers for motoring offences as provided for in the provision at issue?

1.2. Irrespective of the answer to the first question, can the provisions of Regulation 2016/679, in particular the principle of ‘integrity and confidentiality’ referred to in Article 5(1)(f) thereof, be interpreted as meaning that they prohibit Member States from stipulating that information relating to penalty points recorded against drivers for motoring offences falls within the public domain and from allowing such data to be processed by being communicated?

1.3. Must recitals 50 and 154 of the preamble to Regulation 2016/679, Article 5(1)(b) and Article 10 of the same Regulation, and Article 1(2)(cc) of Directive 2003/98/EC be interpreted as meaning that they preclude legislation of a Member State which allows information relating to penalty points recorded against drivers for motoring offences to be transmitted for the purposes of re-use?

1.4. If any of the foregoing questions is answered in the affirmative, must the principle of the primacy of EU law and the principle of legal certainty be interpreted as meaning that it might be permissible to apply the provision at issue and maintain its legal effects until the Constitutional Court makes a final ruling?”

12. On 22 June 2021, the Court of Justice of the European Union delivered judgment in case C-439/19 “Latvijas Republikas Saeima (*Points de pénalité*)”.

The Court of Justice of the European Union answered the first question raised by the Constitutional Court that Article 10 of Regulation 2016/679 must be interpreted as applying to the processing of personal data relating to penalty points imposed on drivers of vehicles for road traffic offences.

As regards the second and third questions, the Court of Justice of the European Union ruled that the provisions of Regulation 2016/679, in particular Articles 5(1), 6(1)(e) and 10 thereof, must be interpreted as precluding national legislation which obliges the public body responsible for the register in which penalty points imposed on drivers of vehicles for road traffic offences are entered to make those data accessible to the public, without the person requesting access having to establish a specific interest in obtaining the data, or to permit that data to be made available to economic operators for the purposes of re-use.

As regards the fourth question, the Court of Justice of the European Union held that the principle of the primacy of European Union law must be interpreted as precluding the constitutional court of a Member State, before which a complaint has been brought challenging national legislation that proves, in the light of a preliminary ruling given by the Court of Justice, to be incompatible with EU law, from deciding, in accordance with the principle of legal certainty, that the legal effects of that legislation be maintained until the date of delivery of the judgment by which it rules finally on that constitutional complaint.

13. At the assignments sitting on 1 July 2021, the Constitutional Court decided to hear the case again before the full composition of the court in the written procedure.

The Concluding Part

14. The applicant holds that the contested provision infringes his fundamental rights enshrined in Article 96 of the Constitution, since it permits processing of his personal data. Namely, the contested provision establishes that the information on the penalty points imposed on the Applicant is generally accessible information and may be disclosed to any person.

However, the Parliament has provided an opinion on the clarification of the boundaries of the proceedings. In particular, the constitutionality of the contested provision must be assessed insofar as it provides that information on the penalty

points imposed on a person in respect of an offence is generally accessible information. This opinion is based on the fact that the contested provision applies to a wide range of different situations, since it determines the status of generally accessible information for different types of information. The legislator's reasoning as to why the status of generally accessible information is granted to each type of information contained in the contested provision can be and is different. Similar observations on the need to clarify the boundaries of the case under review have also been expressed by certain invited persons (*see the written reply of the Parliament and the opinion of L.L.M. Katrīne Pļaviņa in Volume 1 of the case-file, pp. 37-38 and Volume 2, pp. 3*).

14.1. The Constitutional Court has recognised that, when examining a case initiated on the basis of a constitutional complaint, the Constitutional Court, on the one hand, must take into account the requirements of the Constitutional Court Law and must assess the situation to the extent necessary for the protection of the fundamental rights of the person who filed the constitutional complaint, but, on the other hand, must respect the principle of equality and assess the situation of all persons who are in equal and comparable circumstances with the applicant. If the legal provision contested in the constitutional complaint relates to a wide range of different situations, the Constitutional Court specifies to what extent it will assess the contested provision (*see, for example, Judgment of the Constitutional Court of 24 October 2013 in Case No 2012-23-01, paragraph 11*). This is related to the fact that the principle of the rule of law requires that the Constitutional Court, in accordance with its competence, ensures the existence of such a legal system in which regulatory framework incompatible with the Constitution or other legal provisions of higher legal force is eliminated to the fullest possible extent (*see, for example, Judgment of the Constitutional Court of 9 January 2014 in Case No 2013-08-01, paragraph 18.2*). Thus, in the case under review, it is necessary to specify to what extent and in relation to which persons the constitutionality of the contested provision is to be assessed.

14.2. The contested provision establishes that information on vehicles owned by certain legal persons, on the rights of a person to drive vehicles, on the fines

imposed on a person for offences in road traffic which have not paid within the time period specified in the law, and also any other information contained in the State Register of Vehicles and Drivers Thereof and the State Information System of Tractor-type Machinery and Drivers Thereof shall be treated as generally accessible information. Thus, the contested provision establishes the status of generally accessible information to different information and applies to a different set of situations (*cf. Decision of the Constitutional Court of 4 June 2019 on Referring Questions to the Court of Justice of the European Union for a Preliminary Ruling in Case No 2018-18-01, paragraph 8*).

According to Section 43.¹(1) of the Road Traffic Law, the State Register of Vehicles and Drivers Thereof shall include, inter alia, information on the recorded driving offences of drivers of vehicles. Thus, the contested provision also applies to information on the penalty points imposed on the drivers of vehicles. As it follows from the application and the documents annexed thereto, the Applicant considers that the contested provision infringes his rights in the sense that the information on the penalty points registered against him is generally accessible. Moreover, the Parliament also indicated in its written reply that its opinion could be different with regard to other information for which the contested provision provides the status of generally accessible information (*cf. Decision of the Constitutional Court of 4 June 2019 on Referring Questions to the Court of Justice of the European Union for a Preliminary Ruling in Case No 2018-18-01, paragraph 8*).

The Constitutional Court recognises that an assessment of the impact of the contested provision on all persons who have penalty points registered and who thus fall within the scope of the contested provision ensures a comprehensive and objective examination of the case, procedural economy, as well as the existence of a legal system, in which a regulation which is incompatible with the Constitution or other legal provisions of higher legal force is eliminated as completely and comprehensively as possible (*cf. Judgment of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 12.2*). Moreover, in the given case, taking into account the considerations expressed in the written reply of the Parliament and in the opinions of the invited persons, it must be recognised that the

materials contained in the case file are sufficient to assess the constitutionality of the contested provision with regard to all persons for whom penalty points have been registered.

Consequently, the Constitutional Court will assess compliance of the contested provision with Article 96 of the Constitution, insofar as the contested provision establishes that information on the penalty points imposed on a person for road traffic offences is generally accessible information.

15. Section 96 of the Constitution provides that everyone has the right to inviolability of his or her private life, home and correspondence.

15.1. When specifying the right to inviolability of private life enshrined in Article 96 of the Constitution, the Constitutional Court has indicated that this right covers various aspects. It includes the right of an individual to their private space where their subjection to the interference of the state or others would be as minimal as possible. It also protects the physical and mental integrity, honour and dignity, identity and personal data of individuals. Namely, the protection of information on persons is enshrined in the content of the concept ‘right to inviolability of private life’ (*see Judgment of the Constitutional Court of 16 June 2016 in Case No 2015-18-01, paragraph 10*).

Article 89 of the Constitution provides that the State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia. It follows from this Article that the aim of the legislator is to achieve harmony between the human rights norms enshrined in the Constitution and the norms of international law. By specifying the norms of the Constitution in conjunction with the norms enshrined in international human rights instruments, it is necessary to ensure harmony of these norms, preventing that the fundamental rights included in the Constitution are reduced or restricted (*cf. Judgment of the Constitutional Court in Case No 2015-14-0103, paragraph 15.1, and Judgment of 5 December 2019 in Case No 2019-01-01, paragraph 16.3.1*).

The Constitutional Court has already indicated, when specifying the fundamental rights included in Article 96 of the Constitution in conjunction with Article 8 of the Convention, that State institutions are not only obliged to refrain from any unjustified interference with the right to inviolability of private life, but also to take the necessary measures to protect this right. The legislator must establish a mechanism for the protection of personal data that ensures that the rules on processing are fit for the intended purpose. The processing of data related to a person's private life, including disclosure, falls within the scope of the right to inviolability of private life (*see Judgment of the Constitutional Court of 11 October 2018 in Case No 2017-30-01, paragraph 11.2*).

Moreover, as regards the processing of personal data, the European Court of Human Rights has recognised that personal data must be adequate, relevant and include only what is necessary for the purpose of the processing (*see, for example, Judgment of the European Court of Human Rights of 10 October 2006 in Case L. L. v. France, Application No 7508/02, paragraphs 45–46*). Personal data must also be accurate, kept for no longer than is necessary for the intended purpose of processing, processed in such a way as to ensure the security of the data and the lawfulness and transparency of their processing (*cf. see Judgment of the European Court of Human Rights of 22 January 2003 in the Case Taylor-Sabori v. the United Kingdom, Application No 47114/99, paragraphs 17–19, Judgment of 19 October 2005 in the Case Roche v. the United Kingdom, Application No 32555/96, paragraph 162; Judgment of 18 November 2008 in the Case Cemalettin Canli v. Turkey, Application No 22427/04, paragraphs 34–37; and S. and Judgment of the Grand Chamber of the European Court of Human Rights of 4 December 2008 in the Case S. and Marper v. the United Kingdom, Application Nos 30562/04 and 30566/04, paragraphs 99, 103, 125 and 126*). Moreover, certain categories of personal data, such as data relating to criminal offences committed by a person, are subject to special protection (*see, for example, Judgment of the European Court of Human Rights of 13 November 2012 in Case M.M. v. the United Kingdom, application No 24029/07, paragraphs 187–187*). Therefore, by specifying Article 96 of the Constitution in conjunction and harmony with, inter alia, Article 8 of the

Convention, the Constitutional Court has concluded that there exist principles of personal data protection such as the rule of law, fairness, minimality, anonymity and transparency and that certain categories of data, due to their sensitive nature, constitute as specially protected (*see Judgment of the Constitutional Court of 14 March 2011 in Case No 2010-5101, paragraphs 13 and 14, and of 12 May 2016 in Case No 2015-14-0103, paragraph 15.3.*).

Thus, the principles of protection and processing of personal data are derived from both Article 8 of the Convention and Article 96 of the Constitution, which define the requirements that the processing of personal data must meet.

15.2. According to the second part of Article 68 of the Constitution, upon entering into international agreements, Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions. This means that with the ratification of the Treaty on Latvia's Accession to the European Union, Latvia has recognised the openness of its legal system to European Union law and European Union law has become part of the Latvian legal system. Thus, being aware of the supremacy of the European Union law contained in the second part of Article 68 of the Constitution, when adopting and applying national legal provisions, Latvia must take into account the European Union law strengthening democracy and the interpretation thereof enshrined in the case-law of the Court of Justice of the European Union (*cf. Judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraph 16.2*). Namely, the Constitutional Court, while protecting the fundamental norm of Latvia – a democratic state governed by the rule of law – is obliged to ensure the application of such European Union legal provisions that strengthen Latvia as a democratic state based on the rule of law and inherent dignity and freedom of every human being.

15.2.1. In accordance with Article 6(1) of the Treaty on European Union, the European Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (hereinafter – the Charter) and the Charter has the same legal value as the Treaty on European Union and the Treaty on the Functioning of the European Union. Moreover, in accordance with Article 6(3) of the Treaty on European Union and Article 52(3) of the Charter, the

fundamental rights, as guaranteed by the Convention and as they result from the constitutional traditions common to the Member States, shall constitute general principles of European Union law, and the rights guaranteed by the Convention contained in the Charter shall have the same meaning and scope as the rights laid down by the Convention. In the light of the above, the Constitutional Court holds that the Charter also incorporates general principles of European Union law (*see, for example, Judgment of the Court of Justice of the European Union of 10 July 2014 in Case C-295/12 P Telefónica SA and Telefónica de España SAU v European Commission, paragraphs 40 and 41, and Judgment of 29 May 2018 in Case C-426/16 Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others, paragraphs 38–40*).

Article 8(1) of the Charter provides that everyone has the right to the protection personal data concerning him or her. This Article is based, *inter alia*, on Article 16 of the Treaty on the Functioning of the European Union, Article 8 of the Convention and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereinafter – Directive 95/46/EC) (*see: Explanation on Article 8 — Protection of personal data. Explanatory Memorandum (2007/C 303/02) of 14 December 2007 to the Charter of Fundamental Rights of the Convention which drafted the Charter of Fundamental Rights of the European Union*). Moreover, given that, pursuant to Article 94 of Regulation 2016/679, Directive 95/46/EC was repealed with effect from 25 May 2018 and references to that Directive are construed as references to Regulation 2016/679, Article 8 of the Charter is also linked to Regulation 2016/679. Thus, the conditions for the exercise of a person's right to the protection of his or her personal data, as a general principle of European Union law enshrined in Article 8 of the Charter, were laid down in both Directive 95/46/EC and Regulation 2016/679 (*see recital 10 of the preamble to Directive 95/46/EC and recitals 1, 2 and 4 of the preamble to Regulation 2016/679; see also Judgment of the Court of Justice of the European Communities of 20 May 2003 in Joined Cases*

C-465/00, C-138/01 and C-139/01 Österreichischer Rundfunk and Others, paragraph 68).

It follows from the case-law of the Court of Justice of the European Union that the right of the individual to the protection of his or her data, as a general principle of European Union law enshrined in Article 8 of the Charter, is safeguarded primarily by the fact that any processing of personal data must comply, first, with the principles relating to data quality set out in Article 6 of Directive 95/46/EC or Article 5 of Regulation 2016/679 and, second, one of the principles referred to in Article 7 of that Directive or in Article 6 of that Regulation, according to which processing must be recognised as lawful (*see Judgment of the Court of Justice of the European Communities of 20 May 2003 in Joined Cases C-465/00, C-138/01 and C-139/01 Österreichischer Rundfunk and Others, paragraph 65, and Judgment of the Court of Justice of the European Union of 16 January 2019 in Case C-496/17 Deutsche Post, paragraph 57*). These provisions of Directive 95/46/EC and Regulation 2016/679 specify such principles relating to the processing of personal data as lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation and accountability. The content of these principles in Directive 95/46/EC and Regulation 2016/679 is characterised by continuity (*see recital 9 of the preamble to Regulation 2016/679, the Explanatory Memorandum of the European Commission of 25 January 2012 on the draft General Data Protection Regulation and the Explanatory Memorandum of the Council of the European Union of 3 May 2016 on Position No 6/2016; cf . also Judgment of the Court of Justice of the European Union of 16 July 2020 in Case C-311/18 Facebook Ireland and Schrems, paragraph 71, and of 17 June 2021 in Case C-597/19 M.I.C.M, paragraph 107*).

15.2.2. According to Article 2(a) of Directive 95/46/EC and Article 4(1) of Regulation 2016/679, personal data means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as that person's name, identification number, location data, an online identifier or to one or more factors specific to that natural person's physical, physiological, genetic,

mental, economic, cultural or social identity. However, according to Article 2 (b) of Directive 95/46/EC and Article 4(2) of Regulation 2016/679, processing means any operation or set of operations which is performed upon personal data or upon sets of personal data, whether or not by automated means, including disclosure.

The contested provision establishes the status of generally accessible information, *inter alia*, for the information on the penalty points imposed on drivers of vehicles for road traffic offences which are registered in the State Register of Vehicles and Drivers Thereof. According to Section 10(3) of the Freedom of Information Law, generally accessible information may be provided upon request by a private person, where the applicant is not required to specifically justify his or her interest in the information, and the applicant may not be denied access to it on the grounds that the information does not apply to him or her. In turn, in accordance with Paragraph 3.1 of the Cabinet Regulation No 725 of 25 November 2014, Procedure for Requesting Information from the State Register of Vehicles and Drivers Thereof and in the State Information System of Tractor-type Machinery and Drivers Thereof, and Paragraph 18 of the Cabinet Regulation No 185 of 30 April 2019, Regulations of the State Register of Vehicles and Drivers Thereof, the Directorate may provide generally accessible information from the State Register of Vehicles and Drivers Thereof in writing, using electronic data carriers or online data transmission. Thus, the contested provision establishes a subjective right for any person to request and receive from the Directorate the information contained in the State Register of Vehicles and Drivers Thereof on the penalty points imposed on drivers of vehicles for road traffic offences.

Taking all of the above into account, information on the name of an identifiable natural person and the penalty points imposed on him or her constitutes personal data and its disclosure constitutes processing of personal data within the meaning of Article 2 of Directive 95/46/EC and Article 4 of Regulation 2016/679. Since the provisions of Directive 95/46/EC and Regulation 2016/679 on their respective scopes ensure continuity and the Court of Justice of the European Union has recognised that the processing of personal data provided for in the contested provision falls within the material scope of Regulation 2016/679, the Constitutional

Court has no doubts that this processing also falls within the scope of Directive 95/46/EC (*cf. Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19 Latvijas Republikas Saeima (Points de pénalité), paragraphs 60 and 62–72*). This processing falls under Article 6(1) (e) of Regulation 2016/679 and Article 7(e) of Directive 95/46/EC, under which processing is lawful if and to the extent that it is ‘necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller by law (*see ibid., paragraph 99*). In addition, Article 10 of Regulation 2016/679 provides for enhanced protection against the processing of such data due to their association with criminal offences and, consequently, due to their particular sensitivity (*see ibid., paragraphs 74 and 92–94*).

The Constitutional Court concludes that the contested provision, which provides for the processing of personal data, is essentially related to compliance with European Union legislation, i.e. Directive 95/46/EC and, later, Regulation 2016/679. This means that the general principles of European Union law are applicable and subject to Article 51(1) of the Charter, of the Charter as well (*see Judgment of the Court of Justice of the European Union of 26 February 2013 in Case C-617/10 Åkerberg Fransson, paragraphs 19–21, and Judgment of 9 March 2017 in Case C-406/15 Milkova, paragraphs 50 and 51*).

Consequently, when specifying the right to inviolability of private life enshrined in Article 96 of the Constitution in the case under review, the Constitutional Court must ensure harmony with the right of a person to protection of his or her data reflected in Article 8 of the Charter as a general principle of European Union law. In this respect, the Constitutional Court should take particular account of the principles of processing of personal data contained in Articles 6 and 7 of Directive 95/46/EC and Articles 5 and 6 of Regulation 2016/679, compliance with which falls within the scope of the right guaranteed by Article 96 of the Constitution (*cf. Judgment of the Constitutional Court of 14 March 2011 in Case No 2010-51-01, paragraph 13, and Decision of 4 June 2019 on Referring Questions to the Court of Justice of the European Union for a Preliminary Ruling in Case No 2018-18-01, paragraph 10.2*). The requirements laid down in these EU legal

provisions are in line with the right to inviolability of private life enshrined in Article 96 of the Constitution and thus strengthen Latvia as a democratic state based on the rule of law and inherent dignity and freedom of every human being.

15.3. The Constitutional Court concludes that the information on the penalty points imposed on a person, specified in the contested provision, is related to the private life of a person and the processing of this information, including the fact that such information is made available, must be recognised as an interference in the private life of a person. Whether the Directorate has actually disclosed the information on the penalty points imposed on a person to the requesters of information is irrelevant. By entering the penalty points imposed for road traffic offences in the State Register of Vehicles and Drivers Thereof, the person concerned falls within the scope of the contested provision.

Therefore the contested provision restricts the right to inviolability of private life enshrined in Article 96 of the Constitution of a person on whom penalty points for road traffic offences have been imposed.

16. In order to assess the constitutionality of the restriction of fundamental rights contained in Article 96 of the Constitution, it must be ascertained whether:

- 1) the restriction is established by law;
- 2) the restriction has a legitimate aim;
- 3) the restriction is proportionate (*see, for example, Judgment of the Constitutional Court of 11 October 2018 in Case No 2017-30-01, paragraph 12*).

17. When assessing whether a restriction of fundamental rights is established by law, the Constitutional Court examines whether:

- 1) the law has been adopted in compliance with the procedures provided for in laws and regulations;
- 2) the law has been proclaimed and is publicly available in accordance with the requirements of laws and regulations;
- 3) the wording of the law is sufficiently clear to allow a person to understand the content of the rights and obligations arising therefrom and to predict the

consequences of the application thereof (*see Judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraph 17*).

The restriction of fundamental rights must be established in the legislative process which complies with the principle of good lawmaking (*see Judgment of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 15*).

17.1. Section 14.¹ of the Road Traffic Law was included into the Law by the law of 8 July 2003 Amendments to the Road Traffic Law, which entered into force on 1 January 2004. Initially, Section 14.¹(2) of the Road Traffic Law did not stipulate that the information contained in the State Register of Vehicles and Drivers Thereof is generally accessible information.

By the Law of 26 May 2005, Amendments to the Road Traffic Law, Section 14.¹(2) of the Road Traffic Law was reworded, inter alia, to provide that the information contained in the State Register of Vehicles and Drivers Thereof is generally accessible information. At that time, the Section 43.¹(1) of the Road Traffic Law had already entered into force, which stipulated that the State Register of Vehicles and Drivers Thereof should also include information on penalty points. The Parliament examined the draft law in three readings. On 15 June 2005, the President of Latvia proclaimed the Law in the Official Gazette *Latvijas Vēstnesis* No 94 in accordance with the procedure established by the laws and regulations.

17.2. The Constitutional Court has recognised that a legal provision which restricts the fundamental rights of a person must be both comprehensible and predictable. Namely, a legal provision must be formulated so precisely and clearly that a person is able to understand the content of the rights and obligations arising therefrom and to predict the consequences of its application, as well as in a way that the provision ensures protection against its arbitrary application (*see, for example, Judgment of the Constitutional Court of 8 April 2015 in Case No 2014-34-01, paragraph 14*).

A person on whom penalty points for road traffic offences have been imposed can infer and predict the legal consequences that have arisen in relation to him or her from the contested provision and Section 43.¹(1) of the Road Traffic Law. Namely, in such a case, any other person has the right to request from the

Directorate information on the person on whom penalty points for road traffic offences have been imposed.

Thus, the wording of the contested provision is sufficiently clear, a person can understand its content and predict the consequences of its application.

17.3. Several persons, who were invited to the case, have essentially indicated that the legislator has not assessed the conformity of the contested provision with the law of the European Union, in particular - with Regulation 2016/679 (*see the opinions of L.L.M. Katrīne Pļaviņa and Mg. iur. Agnese Boboviča, Volume 1 of the case-file, p. 138, and Volume 2, p. 6*).

Article 21 of the Constitution provides that the Parliament shall establish rules of order to provide for its internal operations and order. Article 21 of the Constitution enshrines the principle of parliamentary autonomy, i.e. the Parliament determines its own working order (*see Judgment of the Constitutional Court of 23 December 2019 in Case No 2019-08-01, paragraph 14*). Balancing the above principle with the principle of separation of powers and the principle of the rule of law, the Constitutional Court in its judgment of 6 March 2019 in Case No 2018-11-01 held that, in accordance with the principle of good lawmaking, the legislator is obliged to assess compliance of the legal provisions established in the draft law with, inter alia, the legal provisions of the European Union, as well as to harmonise the legal provisions established for in the draft law with the legal provisions already existing in the legal system in accordance with the principle of rational legislator (*see Judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraph 18.1*).

The contested provision was adopted in 2005, when Latvia had become a Member State of the European Union and was bound by Directive 95/46/EC, which specifies the principles for the protection of personal data. It does not follow from the materials of drafting of the relevant law that the legislator had established the relation of the contested provision with the norms of European Union law (*see Annotation to Draft Law No 1028, Amendments to the Road Traffic Law, submitted to the 8th Parliament on 30 November 2004. Available at: www.saeima.lv; see also Drafting Documents on the Draft Law No 1028, Amendments to the Road Traffic*

Law, submitted to the Parliament on 30 November 2004, Volume 1, p. 76–117). However, the processing of personal data provided for in the contested provision was subject to the right of the individual to protection of his or her data as a general principle of European Union law, as specified in Directive 95/46/EC and later in Regulation 2016/679.

It follows from the case file that Section 14.¹ of the Road Traffic Law was amended by the Law of 12 April 2018, Amendments to the Road Traffic Law, with the 12th Parliament supporting the Draft Law No 1111/Lp12 in the third reading. Before the second reading of the draft law in the Parliament, the Ministry of Transport submitted a proposal, which provided for specifying in the contested provision that the information on the penalty points imposed on a person for road traffic offences is generally accessible (*see letter No 04-011471 of the Ministry of Transport of 14 February 2018, On Proposals for the Draft Law Amendments to the Road Traffic Law (No 1111/Lp12). Available at: titania.saeima.lv*). This proposal was discussed, inter alia, at the 12th Parliament National Economy, Agrarian, Environmental and Regional Policy Committee meetings on 20 February and 20 March 2018. In these meetings, the Legal Bureau of the Parliament and the Data State Inspectorate called for an assessment of the compliance of the data processing provided for in the contested provision with the requirements of Regulation 2016/679 (*see audio recordings in Volume 1 of the case-file*). However, the case-file does not contain any materials to indicate that the legislator has carried out such assessment.

The Constitutional Court has acknowledged that not every violation of the legislative proceedings constitutes as sufficient grounds to consider that the adopted act does not have legal force. In order for an act to be declared invalid due to a violation of legislative proceedings, there must be reasonable doubt that, had the procedure been followed, the legislator would have adopted a different decision (*c.f. Judgment of the Constitutional Court of 6 March 2019 in Case No 2018-11-01, paragraph 18.5*).

In the present instance, the legislator had not assessed the compliance of the contested provision with the norms of European Union law, however, the

Constitutional Court had not established any other infringements in the procedure of adoption of the contested provisions. The Constitutional Court also takes into account the fact that the provisions of European Union law applicable to the processing of personal data provided for in the contested provision were not clear, and the Constitutional Court did not apply the *acte clair* doctrine thereto when referring the case to the Court of Justice of the European Union for a preliminary ruling (*cf. Decision of the Constitutional Court of 4 June 2019 on Referring Questions to the Court of Justice of the European Union for a Preliminary Ruling in Case No 2018-18-01*, paragraph 11). Therefore, the mere fact that the legislator has not assessed the compliance of the contested provision with the norms of the European Union law, in the case under examination, cannot in itself be a ground for recognising that the restriction of fundamental rights included in the contested provision should not be considered as established by law (*cf. Judgment of the Constitutional Court of 7 June 2019 in Case No 2018-15-01, Paragraph 13.2*). Thus, the Constitutional Court must ascertain whether the restriction of fundamental rights included in the contested provision has a legitimate aim and whether the principle of proportionality has been complied with.

Therefore, the restriction of fundamental rights resulting from the contested provisions is established by law.

18. Any restriction of fundamental rights must be based on circumstances and arguments on why it is necessary, namely, i.e. the restriction must be imposed for the sake of important interests – a legitimate aim (*see, for example, Judgment of the Constitutional Court of 13 October 2015 in Case No 2014-36-01, paragraph 18*). In the Constitutional Court proceedings, the obligation to present and substantiate the legitimate aim of such restrictions lies, first of all, with the institution which issued the contested provision, which in this particular case is the Parliament of the Republic of Latvia (*see, for example, Judgement of the Constitutional Court of 12 February 2020 in Case No 2019-05-01, paragraph 20*). In turn, the Constitutional Court is obliged to objectively assess not only the opinion of the institution which issued the contested act, but all the circumstances of the

case and to establish the existence or, on the contrary, the absence of such an aim (*cf. Judgment of the Constitutional Court of 8 June 2007 in Case No 2007-01-01 paragraph 23*).

The Parliament has pointed out that the aim of the contested provision is to ensure that every person who, in accordance with the right to information enshrined in Article 100 of the Constitution, has a justified and road safety-related need to ascertain whether another person can be entrusted with driving a vehicle, has the possibility to obtain information on the penalty points imposed on another person for road traffic offences. Moreover, another aim of the contested provision is to ensure, in a preventive manner, that any driver of a vehicle is motivated to prevent road traffic offences. This is said to improve road safety. Thus, it is to be held that the legitimate aim of the restriction of fundamental rights contained in the contested provision is the protection of the rights of other persons and public security.

The Constitutional Court has held before that measures provided for in a separate legal provision, which are taken by the State in order to prevent road traffic offences, may be recognised as measures which, together with measures provided for in other legal provisions, serve to achieve a single overarching objective – protection of road traffic safety (*see Judgment of the Constitutional Court of 24 October 2013 in Case No 2012-23-01, paragraph 18.4*). The measure provided for in the contested provision – disclosure of information on the penalty points imposed on a person – is also intended to deter the person from committing new road traffic offences, as well as to deter other persons from committing such offences.

The Constitutional Court takes into consideration the fact that road traffic accidents occur relatively frequently in Latvia, for example, in the last five years, there have been approximately 3,700 road traffic accidents with victims per year (*see: Dynamics of road traffic accidents in Latvia. Available: www.csdd.lv*). Thus, the intention of the legislator in adopting the contested provision was, in essence, to directly improve road traffic safety and protect the right to life and health of persons involved in road traffic. The implementation of the right to free access to information enshrined in Article 100 of the Constitution as the legitimate aim of

the restriction of fundamental right specified in the contested provision, in the present case is, in essence, related to road traffic and improvement of its safety. The protection of public safety and the protection of the rights of others are closely related and complementary objectives with regard to improving road safety and therefore must be considered in conjunction in the present case. This, in turn, is in line with the objective of general interest of the European Union of improving road safety (*see Judgment of the Court of Justice of the European Union of 22 June 2021, Case C-439/19 Latvijas Republikas Saeima (Points de pénalité), paragraph 108*).

Consequently, the legitimate aim of the restriction of fundamental rights contained in the contested provision is the protection of public safety and the rights of others.

19. In ascertaining whether the restriction of fundamental rights included in the contested provision is proportionate, the Constitutional Court examines:

- 1) whether the restriction is appropriate to achieve the legitimate aim;
- 2) whether the aim can be achieved by other means less restrictive of fundamental rights of persons;
- 3) whether the benefit to society of the restriction outweighs the harm to the individual.

If, upon assessment of a legal provision, it is recognised that the restriction of fundamental rights contained therein does not comply with at least one of these criteria, then the contested provision does not comply with the principle of proportionality and is unlawful (*see, for example, Judgment of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 17*).

20. The means selected by the legislator are appropriate for achieving a legitimate aim contained in the contested provision, if the aim is achieved by the specific framework (*see, for example, Judgment of the Constitutional Court of 7 October 2010 in Case No 2010-01-01, paragraph 13*).

Several invited parties in the case have expressed observations that there is insufficient data to prove that it is the contested provision *per se*, and not the

introduction of the demerit point system, which improves road traffic safety in Latvia (*see the opinions of Data State Inspectorate, Mg. iur. Agnese Boboviča and Mg. iur. Signe Plūmiņa, Volume 1 of the case-file. p. 131 and 138, and Volume 2, p. 21*). Similar views were expressed by the Legal Bureau of the Parliament during the consideration of Draft Law No 1111/Lp12 at the 12th Parliament National Economy, Agrarian, Environmental and Regional Policy Committee meeting on 20 March 2018, pointing to the possibility that it is not the contested provision that improves road traffic safety, but the demerit point system in general (*see audio recording in Volume 1 of the case-file*).

The demerit point system is aimed at influencing the legal awareness of drivers in terms of compliance with road traffic regulations, i.e. promoting safe road traffic in accordance with the requirements laid down in the regulatory framework. Paragraph 12 of Regulation No 551 lays down the means of influencing drivers, which, depending on the number of penalty points recorded, include a written warning, road safety training courses in safe driving, or group classes to correct driving behaviour, a road safety test and a driving skills test, as well as a ban on the right to drive. The consequences have an impact on the behaviour of the driver, as they are directly related to improving the theoretical and practical knowledge, as well as the technical and social skills which a person needs to participate in road traffic.

However, the disclosure of information on the penalty points provided for in the contested provision is part of the set of measures forming the demerit point system, which facilitates public access to information on the penalty points imposed on a person for road traffic offences, thus, in certain cases, preventively reducing the possibilities of such a person to participate in road traffic. This promotes compliance with road traffic regulations and improves road safety, as well as protects public safety and the rights of others.

Therefore, the measure selected by the legislator is suitable for achieving the legitimate aim contained in the contested provision.

21. When examining whether the selected means are necessary to achieve the legitimate aim, the Constitutional Court assesses whether the legitimate aim cannot be achieved by other, less restrictive means which would be equally effective (*see, for example, Judgment of the Constitutional Court of 6 April 2021 in Case No 2020-31-01, paragraph 19*).

According to the Applicant, the legitimate aim of the restriction of the fundamental right included in the contested provision could be achieved also if the information on the penalty points imposed on a person for road traffic offences was established a restricted access status and it could be provided on the basis of a substantiated request. However, the Parliament points out that there are no alternative means of achieving the legitimate aim of the restriction of fundamental rights included in the contested provision. In particular, information on the penalty points imposed on a person is necessary for a number of persons, therefore it would be pointless to give this information the status of restricted information. If this were done, such a legal framework would place a disproportionate burden on the Directorate, which would have to assess a large number of requests for information. Moreover, it is impossible to establish the criteria for assessing the substantiation of requests for information.

21.1. Ensuring and promoting road safety is based on considerations of the scientific and technical requirements for roads and vehicles, the use of State budget and the most appropriate ways, at a given stage of societal development, to influence the behaviour of road users and promote compliance with road traffic regulations. This means that the legislator has a relatively wide range of possible measures to promote road safety and the Constitution allows a certain degree of discretion to the legislator in the choice of a particular measure. However, such discretion is not unlimited, i.e., it cannot be used arbitrarily, contrary to the general principles of law and other provisions of the Constitution, as well as international and European Union law (*cf. Judgment of the Constitutional Court of 28 September 2020 in Case No 2019-37-0103, paragraph 29.1*).

In the specific case, in order to promote road traffic safety, the legislator has envisaged the processing of personal data – information on the penalty points

imposed on a person for road traffic offences. In this situation, the legislator had to ensure that the processing of those data complied with the individual's right to the protection of his or her data as a general principle of European Union law enshrined in Article 8 of the Charter, specified in Articles 5 and 6 of Regulation 2016/679 and Articles 6 and 7 of Directive 95/46/EC. In particular, the Court of Justice of the European Union has held that the processing of personal data provided for in the contested provision must comply, in particular, with the general conditions for the lawfulness of data processing laid down in Articles 5(1)(c) and 6(1)(e) of Regulation 2016/679 and the specific restrictions on personal data relating to criminal offences provided for in Article 10 of Regulation 2016/679. In particular, information on penalty points constitutes personal data relating to offences within the meaning of Regulation 2016/679 and, therefore, adequate safeguards for the rights of the data subject should be ensured when allowing disclosure of this information (*see Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19, Latvijas Republikas Saeima (Points de pénalité), paragraphs 93, 94, 102, 104 and 106*).

When assessing the practice of the Member States of the European Union in promoting road safety, the Court of Justice of the European Union has held that this objective can be achieved by means less restrictive of the rights of the data subject, i.e. the person on whom penalty points for road traffic offences are imposed. That is, it is possible to impose effective penalties for road traffic offences, including driving bans, without the need for public disclosure. In addition, it is possible to take preventive measures ranging from public awareness campaigns to the adoption of individual measures requiring a driver to undergo training and take tests, without the public disclosure of the adoption of such individual measures in these cases as well. In other words, there is no reason to believe that the demerit point system, of which the contested provision is a part, could not improve road safety if the information on the offence records registered against a person were not generally accessible. Moreover, the situation where that information is generally accessible, may result in the disclosure thereof to persons who, for reasons unrelated to the objective of general interest of the European Union of improving road safety, wish

to find out about the penalty points that have been imposed on a given person. In the light of the foregoing, the Court of Justice of the European Union has held that the disclosure of information on penalty points under the contested provision is contrary to the provisions of Regulation 2016/679 (*see Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19 Latvijas Republikas Saeima (Points de pénalité), paragraphs 111–115, 118 and 122*).

The Constitutional Court also concludes that by providing in the contested provision for disclosure of information regarding penalty points imposed on a person for road traffic offences to any person requesting such information, the contested provision allows that such information is also received by persons who do not require it in relation to ensuring and promoting road traffic safety. Moreover, the Parliament itself in its written reply indicates that the contested provision is aimed precisely at ensuring the possibility to obtain information on the penalty points imposed on a person to those persons who have a justified need to ascertain whether another person can be entrusted with driving a vehicle (*see the written reply of the Parliament, Volume 1 of the case-file, p. 44*). In particular, persons who have a genuine need for information on the penalty points imposed on a given person would be able to obtain this information even if it had the status of restricted information, thus ensuring adequate safeguards for the rights and freedoms of the data subject.

21.2. The Constitutional Court has held that a more lenient remedy is not just any other remedy, but only a remedy which achieves the legitimate aim at least to the same degree and does not require a disproportionately large investment by the State and society (*see, for example, Judgment of the Constitutional Court of 25 March 2021 in Case No 2020-36-01, paragraph 19.3.3*).

The materials of the case do not confirm that the legitimate aim of the restriction of the fundamental right contained in the contested provision could not be achieved to the same extent if, for example, the information on the record of offences registered against a person had the status of restricted information. This would mean that the information is only provided to persons who have a justified, road-safety related interest in receiving the information. In such a case, by

establishing appropriate safeguards for the rights and freedoms of the data subject and by obliging the Directorate to assess the justification of the requests for information submitted, the contribution of the State cannot be considered disproportionate. This conclusion follows, first, from the fact that by making available the information on penalty points imposed for committing road traffic offences constitutes a serious interference with the right to respect for private and to the protection of data of the person concerned, since it may give rise to social disapproval and result in stigmatisation of the data subject (*see also of the Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19 Latvijas Republikas Saeima (Points de pénalité), paragraph 112, opinion of L.L.M. Katrīne Pļaviņa, Volume 2 of the case-file, p. 7*). Second, if the processing of personal data provided for in the contested provision were to continue in a situation where it is not in conformity with European Union law, data subjects could apply to the courts requesting termination of the unlawful processing of their personal data and claiming compensation for the damage caused to them. Moreover, pursuant to Article 14.¹(1) of the Road Traffic Law and Paragraphs 19 and 20 of Cabinet Regulation No 185 of 30 April 2019, Regulations on the State Register of Vehicles and Drivers Thereof, the Directorate is already obliged to assess the justification of a request for information concerning, for example, information on vehicles owned by a natural person.

Thus, in the given case, there are less restrictive means of restricting the rights of a person which are capable of achieving the legitimate aim of the restriction on fundamental rights contained in the contested provision to the same degree of quality. This means that the restriction of fundamental rights contained in the contested provision does not comply with the principle of proportionality.

Consequently, the contested provision is incompatible with Article 96 of the Constitution.

22. The Applicant has also argued that by making information on the penalty points imposed on a person for road traffic offences available for re-use, the Directorate has acted in breach of Directive 2003/98/EC.

The Constitutional Court draws attention to the fact that Directive 2003/98/EC, in accordance with recital 21 of its preamble and Article 1(4) thereof, did not alter or affect in any way the level of protection of individuals with regard to the processing of personal data, including under Union law, and, in particular, did not alter in any way the obligations and rights established by Directive 95/46/EC and Regulation 2016/679. In the given case, this means that the information on the penalty points imposed on a person could not be passed on to the economic operators so that they could re-use and disclose this information to the public (*see Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19, Latvijas Republikas Saeima (Points de pénalité), paragraphs 126-129*).

23. In accordance with Section 32(3) of the Constitutional Court Law, a legal norm that the Constitutional Court has declared as not conforming to the norm of a higher legal force shall be regarded as not in effect from the day of publication of the Constitutional Court judgment, unless the Court has determined otherwise. According to Paragraph 11 of Section 31 of the Constitutional Court Law, the Constitutional Court has the exclusive competence to decide on another moment from which the contested legal provision declared as not conforming to the provision of higher legal force ceases to have effect.

In deciding on the moment when the contested provision would lose its force, the Constitutional Court procedure must balance the principle of legal certainty, on the one hand, and the fundamental rights of certain persons, on the other. The Court must ensure that the situation, which could arise from the moment when the contested provision becomes void, does not lead to new infringements of the fundamental rights enshrined in the Constitution and also does not cause significant harm to the interests of the society (*see Decision of the Constitutional Court of 4 June 2019 on Referring Questions for a Preliminary Ruling to the Court of Justice of the European Union in Case No 2018-18-01, paragraph 14, and Judgment of 17 December 2020 in Case No 2020-18-01, paragraph 25*).

In the given case, the Constitutional Court takes into account the fact that all persons whom penalty points have been imposed on have fallen within the scope of the contested provision, since it provides for disclosure of the data of these persons to any other person, regardless of whether that person has a justified interest in obtaining that information. This means that such disclosure of personal data may result in uncontrolled processing of personal data without any safeguards for the rights of the data subject. Moreover, the Constitutional Court finds that the contested provision also does not conform to the principles of processing and protection of personal data specified in Articles 5 and 6 of Regulation 2016/679 and Articles 6 and 7 of Directive 95/46/EC, which ensure compliance with the right of the individual to the protection of his or her data, as a general principle of European Union law enshrined in Article 8 of the Charter. In such a situation, it would be contrary to the principle of the primacy of European Union law to maintain the effects of national legislation which is in conflict with European Union law. Derogations from this rule would be possible if two cumulative criteria were met, namely the good faith of the interested parties invoking the preservation of the effects of the national legislation in question and the risk that the interpretation of EU law could lead to serious difficulties. However, in the present case, there is no risk of serious difficulties (*see also Judgment of the Court of Justice of the European Union of 22 June 2021 in Case C-439/19, Latvijas Republikas Saeima (Points de pénalité), paragraphs 132, 136 and 137*).

The processing of personal data provided for in the contested provision is contrary not only to Article 96 of the Constitution, but also to the provisions of European Union law. In order to prevent such a situation and thus to promote the establishment of an area of freedom, security and the rule of law in the European Union, as well as the economic growth of the internal market, the contested provision in the present case must be declared void from the date of its entry into force, namely 29 June 2005.

The Substantive Part

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

decided

to declare Section 14.¹(2) of the Road Traffic Law, insofar as it stipulates that information on the penalty points imposed for road traffic offences is generally accessible information, to be incompatible with Article 96 of the Constitution of the Republic of Latvia and void from the date of entering into force of the Judgment.

The Judgment is final and not subject to appeal.

The Judgment shall enter into force as of the date of its publication.

President of the Court

Sanita Osipova