



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

J U D G E M E N T

on Behalf of the Republic of Latvia
in Case No. 2015-01-01
2 July 2015, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairperson of the court hearing Aldis Laviņš, Justices Kaspars Balodis, Kristīne Krūma, Gunārs Kusiņš, Uldis Ķiniš, Sanita Osipova and Ineta Ziemele,

having regard to the constitutional complaint submitted by Solvita Olsena,

on the basis of Article 85 of the Satversme of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17(1), as well as Section 19² and Section 28¹ of the Constitutional Court Law

at the court hearing of 2 June 2015 reviewed in written procedure the case

“On the Compliance of the First and the Second Part of Section 7 of Law on the National Flag of Latvia and Section 201⁴³ of Latvian Administrative Violations Code with Article 100 of the Satversme of the Republic of Latvia”.

The Facts

1. Law on the National Flag of Latvia (hereinafter – Law on the National Flag) was adopted on 29 October 2009 and entered into force on 18 November 2009.

The first and the second part of Section 7 of Law on the National Flag (hereinafter also – the contested norms of Law on the National Flag) provide:

“(1) The national flag of Latvia shall be placed on public buildings, buildings of legal persons governed by private law and associations of persons, as well as on residential buildings, on 1 May, 4 May, 21 August, 11 November and 18 November.

(2) The national flag of Latvia in mourning presentation shall be placed on public buildings, buildings of legal persons governed by private law and associations of persons, as well as on residential buildings, on 25 March, 14 June, 17 June, 4 July and on the first Sunday of December.”

The first part of Section 7 of Law on the National Flag has been amended once. The amendments that were introduced with the law of 8 November 2012 and entered into force on 16 November of the same year provided that also 21 August was a day of commemoration.

Before Law on the National Flag was adopted, the law “On the National Flag of Latvia”, adopted on 24 November 1994, was in force. Para 5 of Section 2 of this Law also defined the obligation to place the national flag on residential buildings on 16 February, 24 February, 25 February (in mourning presentation), 17 June (in mourning presentation), 4 July (in mourning presentation), 11 November, 18 November and in the first Sunday of December (in mourning presentation).

2. Section 201⁴³ of the Latvian Administrative Violations Code (hereinafter – the contested LAVC norm) provides:

“A warning shall be issued for failing to raise the national flag or other state flags on dates and occasions specified by the Saeima, the Cabinet of

Ministers, councils of republican cities or regional councils, as well as in the case of violation of the method or procedures for raising the Latvian national flag.

A warning shall be issued or a monetary fine in an amount up to forty euros shall be imposed for the same actions if such are committed repeatedly within a year after an administrative sanction had been imposed.”

On 19 July 1995 the law “Amendments to the Latvian Administrative Violations Code” was adopted, by which Chapter Fourteen “e” was included into the law “Administrative Violations in the Use of Symbols of the State”. Section 201⁴³, included in this Chapter, *inter alia*, establishes liability for failing to place the Latvian national flag on the dates specified by the Saeima, envisaging a monetary fine up to 50 lats for it. Warning as a penalty was not envisaged.

Section 201⁴³ of the Latvian Administrative Violations Code (hereinafter also– LAVC) was amended on 4 February 2010 in connection with adoption of Law on the National Flag. The current wording of LAVC Section 201⁴³ is in force since 1 January 2014, when amendments to the Latvian Administrative Violations Code entered into force, by which the monetary fine established in Section 201⁴³ was expressed in euro, un now its maximum amount is not 30 lats, but 40 euro.

3. The applicant **Solvita Olsena** (hereinafter – the Applicant) on 14 June 2013 in her property, which was also her place of residence, celebrated a family festival. The Applicant had not placed on the residential building the Latvian national flag in mourning presentation because it would have hindered the celebrations.

An administrative violation report was drawn up with regard to the Applicant because the Latvian national flag in mourning presentation had not been placed on the Applicant’s residential building (*see Case Materials p. 21*), noting that the Applicant had failed to place on a residential building owned by her the Latvian national flag in mourning presentation in compliance with the

requirements of the second part in Section 7 of Law on the National Flag and of Para 10 of the Cabinet Regulation of 27 April 2012 No. 405 “Regulations on Applying Law on the National Flag of Latvia” on the day of commemoration of the victims of the communist genocide, and thus had committed an administrative violation. On 28 November 2013 Pārdaugava Sub-committee of the Administrative Committee of the Riga City Council adopted a decision to impose an administrative penalty upon the Applicant – a warning, on the basis of Section 32 and the first part of Section 201⁴³ of LAVC. The Applicant appealed against this decision. On 17 December 2013 the Administrative Committee of the Riga City Council decided to leave the decision on imposing the administrative penalty unamended (*see Case Materials p. 22*). The Applicant appealed against the decision by the Administrative Committee of the Riga City Council before the Court of Riga City Zemgale Suburb, which by the judgment of 4 April 2014 (*see Case Materials p. 29*) left the decision on imposing the administrative penalty unamended. The Applicant submitted an appellate complaint to the Panel of Criminal Cases of the Riga Regional Court, which with the judgement of 17 June 2014 (*see Case Materials p. 32*) left the judgement by the Riga City Zemgale Suburb Court unamended. The judgement by the Panel of Criminal Cases of Riga Regional Court was not subject to appeal.

The Applicant holds that the contested norm of Law on the National Flag and the contested LAVC norm (hereinafter jointly also – the contested norms) infringe upon her right to freedom of speech guaranteed in Article 100 of the Satversme of the Republic of Latvia (hereinafter – the Satversme). She requests the Constitutional Court to recognize the contested norms as being incompatible with Article 100 of the Satversme.

If on 14 June 2013 the Latvian national flag in mourning presentation had been placed on the Applicant’s residential building, it would have been contrary to her political and philosophical conviction. Allegedly, the obligation to place the Latvian national flag in mourning presentation on a residential building significantly restricts the Applicant’s freedom of speech and the right

to freely express her opinion on historical events. The Applicant holds that she is forced to express opinion that is loyal to the State in a place, at a time and in a way that is unacceptable to her.

Article 100 of the Satversme should be interpreted broadly, including into it also non-verbal forms of expression. The use of the Latvian national flag as a symbol of the state is a way, in which a person expresses his or her opinion in a non-verbal form. The Applicant underscores that she uses the Latvian national flag only when she wishes to express her opinion on the events in the state. The freedom of speech should be applied both to persons, who use the national flag as a means of expression, and to persons, who choose not to use it.

The Applicant does not deny that pursuant to Article 116 of the Satversme restrictions may be placed upon an individual's rights, and yet she emphasizes that the restriction upon an individual's rights established by the contested norms is disproportional. Allegedly, the obligation established by the contested norms of Law on the National Flag for private persons to place the Latvian national flag on residential buildings does not serve the legitimate aim, and even if a legitimate aim could be established, this restriction, nevertheless, should not be recognised as being proportional and necessary in a democratic society.

Upon having familiarised herself with the case materials the Applicant submitted additional considerations regarding her claim, indicating that it was linked to Article 99 of the Satversme, which protected an individual's right to the freedom of thought and conscience. She does not uphold the opinion expressed by the Saeima regarding the legitimate aim of the restriction upon rights. Allegedly, compulsory use of the Latvian national flag as the symbol of the state cannot be recognised as an important pre-requisite for the protection of public welfare.

4. The institution, which adopted the contested acts, – **the Saeima** – holds that the contested norms comply with Article 100 of the Satversme.

The Saeima, referring to the judicature of the European Court of Human Rights (hereinafter– ECHR), which is said to be comparable to this case, notes that obligation to place the Latvian national flag on residential buildings applies to all private persons in a general and neutral way, irrespectively of their ethnicity or views. Placing of the Latvian national flag on residential buildings on the days specified in Law on the National Flag as a technical activity is said to be an obligation that follows only from the fact that the person owns a residential building and cannot be considered as an obligation imposed upon these persons to express their personal loyalty to Latvia. This obligation, similarly to the obligation of paying real estate tax or to place on the building a number plate conforming to a certain standard, is said not to be linked with a person's beliefs or sentiment.

The obligation to place the Latvian national flag on a residential building on ten days in a year, allegedly, does not influence the Applicant's rights, within the limits set in Article 100 of the Satversme, to express her opinion on the events in Latvian history in any place and at any time. Moreover, it does not impose an obligation to abstain from hosting events in one's house on the specified dates or from expressing one's personal attitude towards the national holidays or the historical events remembered on the days of commemoration. The Saeima does not uphold the Applicant's opinion that she had been imposed an obligation to express mourning or joy on the respective days; i.e., that the so-called negative right to the freedom of speech or an individual's right not to express one's opinion would be restricted.

If, however, it can be established that the Applicant's right to the freedom of speech is restricted, then the respective restriction has a legitimate aim and should be recognised as being proportional.

The obligation to place the Latvian national flag on residential buildings on ten days that have been established by the contested norms of Law on the National Flag is said to follow also from the Preamble of the Satversme (hereinafter – the Preamble) and Article 4 of the Satversme, which establishes the constitutional status of the Latvian national flag. The national flag of Latvia

would not reach its aim – to symbolise Latvia as a democratic society and to consolidate people – if the obligation to use it had been imposed only upon institutions of public administration. The legislator’s task to regulate the use of the Latvian national flag and to establish a commensurate obligation to private persons to use it in some cases is said to follow from Article 4 of the Satversme. The purpose of Law on the National Flag is said to comply with the legitimate aim defined in Article 116 of the Satversme – “public welfare”, which is said to comprise also intangible aspects that are necessary for the functioning of society. Moreover, it also complies with the purpose of protecting other persons’ rights, which the second part of Article 10 of the European Council Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) recognizes as being legitimate.

The Saeima holds that the established restriction is appropriate for reaching the legitimate aim, since placing of the Latvian national flag on residential buildings owned by natural persons ensures that the owner of the respective building participates in the commemoration of the relevant historical events. By this also a noteworthy part of the rest of society is reached. The necessity of the restriction in a democratic society should be examined both in the historical context, which is included in the third paragraph of the Preamble, and also in view of the relevance of the values linked to it in contemporary Latvia and Europe.

With regard to the contested LAVC norm the Saeima notes that the following fact should be taken into consideration – the penalty envisaged for failure to place the Latvian national flag on a residential building is to be imposed in an administrative procedure, not in criminal law procedure. If a person is made administratively liable, then in the case of first offence the legislator has envisaged the minimal administrative penalty, and also in the case of repeated offence the party applying the penalty has been granted the discretion to issue a warning. The Saeima also refers to LAVC Article 21, which allows not initiating a case of administrative violation and issuing only

an oral admonishment. Whereas in the case when a monetary fine is imposed, the contested LAVC norm allows a flexible review of its amount, abiding by the principle of individualizing punishment. The punishment defined in the Latvian Administrative Violations Code should not be considered as being obviously disproportional.

The Saeima, referring to the judicature of the Constitutional Court, underscores the legislator's broad discretion in the field of penal policy and notes that the legislator should rule on such issues, the decisions on which mainly depend upon political expedience.

Upon familiarising itself with the case materials, the Saeima has submitted additional considerations. The Saeima notes that placing the Latvian national flag on residential buildings is a public obligation. The placing of the Latvian national flag on a residential building is showing respect towards this flag and the constitution of the state, it does not mean supporting certain political views. The Saeima underscores that that the administrative penalty envisaged for failing to perform the obligation defined by the contested norms of Law on the National Flag should not be viewed as being obviously contrary to an individual's right to the freedom of speech.

5. The summoned person – **the Ministry of Justice** – holds that the contested norms comply with Article 100 of the Satversme.

The obligation to place the Latvian national flag on a residential building is said to have a legitimate aim – “to symbolise and develop statehood”, and this aim, in view of both the historical and the current geopolitical context, is said to be important from the vantage point of the existence of the State of Latvia and societal cohesion. Placing of the Latvian national flag on residential buildings on days of commemoration is said to mean showing one's respect and solidarity to those members of society, who themselves or whose relatives suffered severely due to totalitarian regimes.

The Ministry of Justice does not uphold the Applicant's opinion that the obligation to place the Latvian national flag on residential buildings causes the

need to be in mourning or to express one's opinion publicly. Allegedly, the Latvian national flag, essentially, is a symbol with various aspects, and its symbolic meaning can be perceived differently. Encounters with the Latvian national flag causes in people emotions and attitude; however, it is said to be rather an emotional aspect and not a category of law. The contested norms of Law on the National Flag were not intended to shape or to change a person's personal views, but rather to inform the whole society, to announce publicly festive or mourning days and to remind of them. The benefit to society is said to exceed the restriction upon an individual's right.

Moreover, the historical context should be taken into account; i.e., the fact that the use of the Latvian national flag was prohibited for a long period of time, and it follows from this fact, in turn, that the tradition and culture of using the national flag should be developed in society. The number of those days, when the Latvian national flag must be placed on residential buildings, has been established in a commensurate ways, and the procedural order for using the flag is said not to be burdensome. Thus, the way of creating incentives for public patriotism is said to be an issue to be dealt with by making a political choice.

With regard to the contested LAVC norm, the political conditions for the development of the democratic state structure in Latvia should be taken into consideration; i.e., the fact that this norm initially had been adopted at the time, when the main task had been overcoming the consequences of the Soviet totalitarian regime and transition to a democratic state structure. The penalty envisaged for failing to place the Latvian national flag on residential buildings had been reviewed and adjusted to the current situation a number of times. Likewise, the contested LAVC norm does not comprise an obviously disproportional excessive sanction for failing to place the Latvian national flag upon residential buildings.

6. The summoned person – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that the assessment of the

compliance of the contested norms with Article 100 of the Satversme cannot be unequivocal.

The Ombudsman upholds the finding consolidated in the judicature of the Constitutional Court that the freedom of speech covers a very extensive field and that the hoisting of the Latvian national flag falls with an individual's right to express one's opinion freely. The Latvian national flag should be seen as one of the symbols of the state. By hoisting the Latvian national flag an individual expresses not only one's personal opinion about the respective events, but also his or her political views.

The legitimate aim of Law on the National Flag is said to follow from annotation to it, referring to the use of the symbols of Latvian state in society and strengthening of national self-confidence. The Ombudsman holds that strong national self-confidence strengthens also the democratic structure of the state and could indirectly foster public welfare.

In analysing the necessity of a restriction upon rights in a democratic society, its proportionality must be examined. Patriotism cannot be facilitated by coercive means, imposing an obligation to engage in active behaviour to commemorate events of historical importance. Such obligation could in no way consolidate the democratic structure of the state by functioning as a coercive or repressive mechanism. The Ombudsman notes that a penalty for failing to perform this obligation is envisaged to everyone who, for any reasons, does not wish to or is unable to express respectful attitude towards the particular events.

Allegedly, commemoration of historical events could be promoted by other, alternative means; for example, by informing inhabitants about historical events, explaining the significance of these events in the history of Latvia and the world and in the development of societal values, as well as by inviting to commemorate them by placing the Latvian national flag on residential buildings.

In analysing the proportionality of the restriction upon rights, the Ombudsman examines the importance of the particular historical dates in the history of Latvia and the Latvian nation and expresses the opinion that both the

obligation to place the Latvian national flag on residential buildings and the penalty for failure to place it on residential buildings should be retained with regard to two dates – 18 November and 4 May; however, the issue of the scope of penalty in those cases, where the Latvian national flag had not been placed on a residential building, should be discussed. With regard to other dates specified by the contested norms of Law on the National Flag the restriction upon rights is said to be disproportional.

7. The summoned person – Representative of Latvia before International Human Rights Organisations (hereinafter – the Representative) – expresses the opinion that the contested norms of Law on the National Flag should be examined in interconnection with the contested LAVC norm, since the penal sanctions established by the legislator is an integral element in the application of the contested norms of Law on the National Flag and they are of essential importance in assessing the proportionality of the restriction upon the freedom of speech.

The restriction upon the Applicant's negative right to the freedom of speech should be examined also in close interconnection with the quality of the contested LAVC norm.

Pursuant to the judicature established by ECHR, the freedom of speech is not absolute and the State has the right to establish restrictions upon it. The Representative underscores that such restrictions should comply with the provisions of Article 116 of the Satversme. I.e., restrictions must be established by law, they must be necessary for reaching the legitimate aim and they must be proportional. Likewise, the Representative, referring to ECHR judicature, underscores that the legislator of each particular state has the best understanding of the situation in the state and can provide the best definition of the aims to be reached by the particular restrictions.

8. The summoned person – Associate Professor of the University of Latvia Faculty of Social Sciences, Department of Political Science

Dr. sc. pol. Ivars Ijabs – expresses the opinion that the Latvian national flag is an important symbol of the statehood of Latvia and the use or failure to use it cannot be separated from expressing one's opinion. I. Ijabs does not uphold the opinion expressed by the Saeima that placing of the Latvian national flag on residential buildings should be seen solely as a technical activity that “follows only from the fact that the person owns a residential building”. Such opinion is said to be contradictory to the special legal status and protection granted to the Latvian national flag.

In relation to the imperative obligation to place the Latvian national flag on residential buildings on the days specified by the contested norms of Law on the National Flag, allegedly, it is impossible to identify “acute social need”, which has been noted in ECHR judicature as the necessary pre-requisite for establishing restrictions upon an individual's freedom of speech.

The assumption that the use of the Latvian national flag on the dates indicated in the contested norms of Law on the National Flag promotes education of society, patriotism and understanding of democracy is said to be speculative. I. Ijabs refers to an analogy, i.e., during the period of Soviet occupation the compulsory obligation to use the flag in Latvia did not promote loyalty to the Soviet power. Patriotism and understanding of democratic values is said to be founded upon other factors, rather than obligations imposed by the law to perform certain rituals. Loyalty towards a democratic state should be separated from the loyalty towards a certain political ideology or force, for example, a party. In cases established by law public expression of loyalty towards the democratic state can be required; whereas the requirement to express loyalty towards a certain political ideology breaches an individual's rights and endangers the political pluralism typical of democracy. By looking back into history it can be concluded that strict requirements to display loyalty to a certain political ideology were characteristic of authoritarian and totalitarian regimes; however, such trends can be observed also in new, poorly consolidated democratic states.

9. The summoned person – **pro-rector of the Riga Graduate School of Law, Associate Professor *Dr. iur. Mārtiņš Mits*** – holds that the contested norms comply with Article 100 of the Satversme.

The placing of the Latvian national flags on residential buildings on the dates specified by the Saeima is said to serve as a symbolic reminder of the hardships that had to be overcome to establish and maintain an independent state of Latvia, as well as to remind that citizens must be aware of the values of the state based upon certain fundamental principles defined in the Satversme. Placing of the Latvian national flag on residential buildings on these dates is aimed at maintaining historical memory and performs the function of both educating and promoting patriotism.

On the one hand, the freedom of speech, which enjoys broad protection, should be assessed, but, on the other hand, also the right of the State and, simultaneously, its obligation to maintain the historical memory and, thus, also the democratic structure of the State, independence and sovereignty, which means that the states have been granted broad discretion with regard to the choice of political means for reaching the purpose. This choice depends upon various factors that are typical of the particular state, for example, historical circumstances, constitutional traditions, and political situation.

M. Mits upholds the Applicant's opinion that the State prohibits her from expressing her political and philosophical opinion in one particular way – by not placing the Latvian national flag on a residential building on the dates specified by the Saeima; however, he notes that such restriction upon the freedom of speech is very narrow, since the expression of one's opinion by any other legal means is not restricted either on these days, or at any other time.

In view of the historical circumstances, in which the statehood of Latvia developed, as to which Latvia is said to differ from the majority of European states, and the current foreign policy situation, which increases the need for democracy and awareness of the value of one's statehood, as well as the fact that the restriction upon the freedom of speech is narrow as to its nature, it can be concluded that the public benefit from the contested norms generally

exceeds the inconvenience that an individual might experience as the result of application thereof.

The Findings

10. The Applicant requests the Constitutional Court to review the compatibility of the contested norms with Article 100 of the Satversme. It provides: “Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.”

Even though the Applicant requests examining the compatibility of the contested norms with Article 100 of the Satversme, the substantiation provided in the application pertains only to the possible incompatibility of the contested norms with the first sentence in Article 100 of the Satversme. Thus, in accordance with the claim, the Constitutional Court reviews the possible incompatibility of the contested norms with the first sentence of Article 100 of the Satversme.

The Applicant, after having familiarized herself with the case materials, has expressed the opinion that the contested norms have an impact also upon her freedom of thought, but has not requested expanding the scope of her claim. The Constitutional Court also notes that the case has been initiated with regard only to the possible infringement of the right to freedom of speech enshrined in Article 100 of the Satversme.

10.1. The contested norms of Law on the National Flag establish the obligation to place the Latvian national flag on public buildings, buildings of legal persons governed by private law and associations of persons, as well as on residential buildings on ten days of the year, on five out of these – in mourning presentation. Whereas the contested LAVC norm envisages an administrative penalty for failure to perform this obligation.

The Cabinet of Ministers Regulation of 27 April 2010 No. 405 “Regulations on Applying Law on the National Flag of Latvia” (hereinafter – Regulation No. 405), adopted in accordance with Para 1, Para 2 and Para 4 of Section 22(1) of Law on the National Flag, provides that the possessor or holder of a building or premises or his authorised person, who has been imposed the respective obligation, is responsible for complying with Law on the National Flag and Regulation No. 405. The Application has not contested the compatibility of Regulation No. 405 with the Satversme.

Law on the National Flag attributes the obligation of placing the Latvian national flag on public buildings, buildings of legal persons governed by private law and associations of persons, as well as on residential buildings. The application and the case materials comprise considerations only with regard to the application of the contested norms to residential buildings owned by natural persons. Since the Applicant is a natural person, who owns a residential building, it should be held that the limits of the claim are defined by the possible infringement upon her rights – those of a natural person, owner of a residential building.

10.2. The Applicant had been administratively punished, because the Latvian national flag in mourning presentation had not been placed on the residential building that she owned on one of the dates specified in the contested norms of Law on the National Flag – on 14 June. The Applicant holds that the obligation established in the contested norms of Law on the National Flag to place the Latvian national flag on residential buildings on all the dates specified in these norms violates her right to the freedom of speech, since, pursuant to the contested LAVC norm, she may be punished on any of these days, if the Latvian national flag or the Latvian national flag in mourning presentation has not been placed on the residential building that she owns.

The case materials show that the Saeima and persons summoned in the case present their considerations with regard to the contested norms in their interconnection. It follows from the annotation to the draft Law on the National Flag that the amendments to the contested LAVC norm were elaborated

together with the drafting of the law (*see annotation to the draft law No. 1226/Lp9 “Law on the National Flag of Latvia” submitted to the Saeima on 25 May 2009*). Likewise, during the debates at the Saeima sittings the draft Law on the National Flag was analysed together with the contested LAVC norm; i.e., the obligation to place the Latvian national flag on residential buildings and the administrative liability for the failure to perform this obligation (*see transcript of the Saeima sitting of 15 October 2009*).

The obligation to place the Latvian national flag on buildings is defined by the contested norms of Law on the National Flag and is not limited only to one day when the Applicant failed to perform this obligation. Exactly the same obligation must be performed on all ten days specified in the contested norms of Law on the National Flag (the only difference is the presentation of the Latvian national flag on days of commemoration), and also the consequences of the failure to perform it are identical; i.e., the envisaged administrative penalty. The contested LAVC norm does not provide an exhaustive list of all elements of the administrative violation. To establish the content of the contested LAVC norm, it must be analysed in interconnection with the contested norms of Law on the National Flag. Thus, the Constitutional Court holds that the obligation to place the Latvian national flag on residential buildings owned by natural persons on the dates specified by the Saeima and the administrative penalty for failure to perform this duty must be examined in interconnection.

Hence, the Constitutional Court will examine the contested norms in interconnection, insofar they impose an obligation upon natural persons on the dates specified by the contested norms of Law on the National Flag to place on residential buildings that they own the Latvian national flag and establish an administrative penalty for the failure to perform this obligation.

11. The Applicant had not placed on her house the Latvian national flag in mourning presentation on 14 June 2003, because she had organised a family

celebration on this day and had not wanted to express mourning. She is defending her right to the freedom of speech; i.e., the right to adhere to her opinion, not expressing it.

11.1. The Constitutional Court has already reviewed issues related to the freedom of speech, revealing the content of Article 100 of the Satversme in individual aspects of the freedom of speech. It has been recognised in the case law of the Constitutional Court that the freedom of speech is considered as being one of the most important fundamental human rights, included in the constitution of all democratic states (*see, for example, Judgement of 29 October 2003 in Case No. 2003-05-01, Para 21*). The freedom of speech comprises a person's right to adhere to one's opinion and to express it freely. The pre-requisite for exercising this right is the freedom to receive and to distribute information, which is one aspect of the freedom of speech.

In establishing the content of fundamental rights defined in the Satversme, Latvia's international commitments in the field of human rights must be taken into consideration (*see Judgement of 16 December 2008 by the Constitutional Court in Case No. 2008-09-0106, Para 4*). The international human rights provisions on the constitutional level are a means for determining the content and the scope of fundamental rights and at the same time are directly applicable in Latvia, insofar these are legally binding upon the state. The State's obligation to abide by the international commitments in the field of human rights that it has assumed follows from Article 89 of the Satversme, laws and international treaties binding upon Latvia. The Constitutional Court underscores the aim of reaching harmony between the norms of human rights included in the Satversme and the international human rights provisions (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings*).

The Constitutional Court has recognised that the content of Article 100 of the Satversme can be revealed in full by taking into account Article 19 of the United Nations Organisation (hereinafter – UN) International Covenant of Civil and Political Rights of 16 December 1996 (hereinafter – the Covenant),

as well as Article 10 of the Convention (*see Judgement of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Findings*). Legal literature emphasizes the substantive link between the inclusion of Chapter VIII “Fundamental Human Rights”, thus, also Article 100, into the Satversme with the Convention and the Covenant (*see: Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību žurnāls, 9–12/1999. Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūta izdevums, 21. lpp.*).

11.2. The initial historical objective of human rights – to protect a person against unfounded interference by the State in the sphere of his liberty – can be discerned also in the content of the right to freedom of speech.

The United Nations Commission on Human Rights has recognised the negative aspect of the freedom of speech, underscoring that any form of effort to coerce a person to express one’s opinion is to be considered as a violation of “the freedom not to express one’s opinion (*General Comment No. 34: Freedom of opinion and expression (Art. 19): 10/09/2011. CCPR/C/GC/34, para 10*). This has been recognised also within the European system of human rights protection (*see Report by the European Commission on Human Rights of 1 March 1994 in the Case “Goodwin v. the United Kingdom”, Para 48*).

The judicature of ECHR includes references to the possible infringement upon the negative aspect in the freedom of speech (*see, for example, Judgement of 3 April 2012 by the Grand Chamber of ECtHR in Case “Gillberg v. Sweden”, Application No. 41723/06, Para 84*), it has also been recognised that an individual may express one’s opinion by showing one’s attitude and by behaviour (*see, for example, Judgement of 23 September 1998 by ECHR in Case “Steel and Others v. the United Kingdom”, Application No. 24838/94, Para 90 and 92*). Thus, the showing of attitude may manifest itself as not expressing one’s opinion. An individual may choose to be “free from” expressing one’s opinion and thus exercise his or her rights to the freedom of speech in its negative aspect.

11.3. The right to freedom of speech defined in Article 100 of the Satversme is a right that protects a person. It provides that a person may

request the State not to interfere in the field of his or her freedom of speech. The first sentence in Article 100 of the Satversme comprises a reference to the negative aspect of the freedom of speech, i.e., the right “to keep information”. In the case under review the Constitutional Court distinguishes between two aspects of the freedom of speech: the positive one or an individual’s right to freely receive and distribute information, to express one’s opinion publicly orally, in writing, visually, with the help of artistic means of expression and other legal ways, and the negative one or the right to keep information, adhere to one’s opinion and not express it. It is this negative aspect that pertains to the facts of the case under review. The Constitutional Court, in interpreting Article 100 of the Satversme in interconnection with the Convention and the Covenant, finds that the freedom not to express one’s opinion falls with the scope of Article 100 of the Satversme.

Thus, the negative aspect of the freedom of speech falls with the scope of Article 100 of the Satversme.

11.4. The Constitutional Court has recognised in its case law that everyone has the right to freely receive information and express their opinion in any form – orally, in writing, visually, using artistic means of expression, etc. (*see, Judgement of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Findings, and Judgement of 29 October 2003 in Case No. 2003-05-01, Para 21*).

The freedom of speech, alongside its traditional manifestations, for example, speeches, diversity of opinion in mass media, participation in demonstrations and other events, comprises also various forms of artistic expression, for example, fiction, painting, music, as well as other combined forms of expression for the freedom of speech, *inter alia*, use of symbols (*see, for example, ECHR Judgement of 21 March 2002 in Case “Nikula v. Finland”, Application No. 31611/96, Para 46, and Judgement of 21 October 2014 in Case “Murat Vural v. Turkey”, Application No. 9540/07, Para 44 and 46*).

It is recognised in Para 52 of the ECHR Judgement of 24 July 2012 in Case “*Fáber v. Hungary*”, Application No. 40721/08, that the use of a flag

with symbolic meaning is to be recognised as an expression of the freedom of speech. It is also emphasized in legal literature that the freedom of speech may manifest itself as “symbolic expression” (*see: Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. Rīga: Latvijas Vēstnesis, 2011, 360. lpp.*). Thus, placing of the Latvian national flag on a residential building owned by a natural person is also on of the expressions of the freedom of speech.

The Applicant also recognises the symbolic meaning of the Latvian national flag; however, on that particular day she had chosen not to express her opinion by placing the Latvian national flag on the residential building. Thus, the Applicant exercised her right to the freedom of speech in its negative aspect.

Thus the scope of the first sentence in Article 100 of the Satversme comprises also placing of the Latvian national flag on a residential building owned by a natural person or the choice not to place it.

12. The contested norms of Law on the National Flag impose the obligation to place the Latvian national flag on residential buildings owned by natural persons. Whereas the contested LAVC norm establishes an administrative penalty for the failure to perform this obligation. The Applicant had not wanted to express her opinion by placing the Latvian national flag in mourning presentation on the residential building owned by her. An administrative penalty was imposed upon her for this. The Applicant appealed against the administrative penalty imposed upon her, but the penalty had been left unchanged.

Thus, the contested norms restrict the Applicant’s freedom of speech in its negative aspect.

13. An individual’s rights may be restricted, if the restriction can be justified, i.e., it is justifiably necessary in public interests.

The Constitutional Court has recognised that the right to freedom of speech is not absolute (*see Judgement of 5 June 2003 by the Constitutional Court in Case No. 2003-02-0106, Para 1 of the Findings*). It has also been noted in the case law of ECHR that in some cases the individual interests may be restricted, giving preference to the interests of society (*see, for example, ECHR Judgement of 25 November 1997 in Case “Zana v. Turkey”, Application No. 18954/91, Para 51, Judgement of 21 October 2014 in Case “Murat Vural v. Turkey”, Application No. 9540/07, Para 62 and 63, and Judgement of 13 January 2015 in Case “Petropavlovskis v. Latvia”, Application No. 44230/06, Para 70 and 71*). Restrictions upon the freedom of speech must be interpreted narrowly, and the legislator must provide appropriate and sufficient justification for the need of such restriction (*see, for example, ECHR Judgement of 8 July 2008 in Case “Vajnai v. Hungary”, Application No. 33629/06, Para 45 and 46*).

To establish, whether the restriction upon the right to freedom of speech established by the contested norms is justifiable, the Constitutional Court must examine, whether this restriction upon fundamental rights has been introduced by a law adopted in due procedure, whether this restriction has a legitimate aim and whether the restriction is commensurate to its legitimate aim (*see, for example, Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 22*).

14. To examine, whether the restriction upon fundamental rights has been established by law, it must be verified:

1) whether the law has been adopted in accordance with the procedure provided for in regulatory enactments;

2) whether the law has been promulgated and is publicly accessible in accordance with requirements defined in regulatory enactments;

3) whether the law has been worded with sufficient clarity, so that a person would be able to understand the contents of the rights and obligations that follow from it and would be able to foresee the consequences of

application thereof (*see Judgement of 8 April 2015 by the Constitutional Court in Case No. 2014-34-01, Para 14, and Judgement of 4 February 2009 in Case No. 2008-12-01, Para 10.1*).

There is no dispute in the case, whether the contested norms have been adopted and promulgated in accordance with procedure established by regulatory enactments and are publicly accessible, nor – whether the contested norms have been worded with sufficient clarity.

Thus, it can be concluded that the restriction upon rights has been established by law.

15. Any restriction upon rights must be based upon circumstances and substantiation for its necessity; i.e., the restriction must be established in favour of important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

It follows from Article 116 of the Satversme that the right to the freedom of speech can be restricted to protect other persons' rights, democratic structure of the State, public safety, welfare and morals.

The Satversme has established the possible restrictions upon the freedom of speech in a general way, whereas the Convention provides concrete criteria. The legitimate aims referred to in the second part of Article 10 of the Convention, for the sake of which the freedom of speech may be subject to restrictions, are the following: national security, interests of territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary.

Thus, the aim of the restriction upon the freedom of speech must be recognised as being legitimate if it corresponds with the aims referred to in Article 116 of the Satversme, which must be examined in interconnection with the aims indicated in the second part of Article 10 of the Convention.

15.1. The Constitutional Court has recognised that in the procedure before the Constitutional Court the obligation to indicate the legitimate aim first of all lies upon the institution, which adopted the contested act (*see Judgement of 25 October 2011 by the Constitutional Court in Case No. 2011-01-01, Para 13.2*).

It follows from the case materials that, according to the Saeima's opinion, the restriction upon rights that is established by the contested norms has the legitimate aim defined in Article 116 of the Satversme – improving public welfare (*see Case Materials, p. 104*). The Saeima has explained that the obligation to place the Latvian national flag “on residential buildings has been established with the aim of commemorating historical events that have been recognised, in a democratic procedure, as being significant in the development of Latvia as a democratic state”, it also ensures education of society and awareness of the development of democracy and the value of fundamental human rights. The Saeima, referring to the second part of Article 10 of the Convention points also to the protection of other persons' rights as the legitimate aim of the established restriction. Whereas the Applicant holds that the legitimate aim of the established restriction cannot be discerned.

The first paragraph of the Preamble provides that “The State of Latvia [...] has been established [...] to ensure freedom and promote welfare of the people of Latvia and each individual”. Thus, promoting the welfare of Latvian society is one of the objectives of the State. The Satversme provides that a democratic structure of State has been established in Latvia (*see the fourth paragraph of the Preamble*). The most effective exercise of human rights and freedoms is possible under the conditions of democracy.

From the opinions provided by the summoned persons regarding the legitimate aims of the rights restriction, i.e., promoting public patriotism, commemoration of historical events important for the State of Latvia, maintaining the values embedded in the Satversme, showing respect and solidarity, consolidation of the national self-confidence, one general aim, summarising all the aforementioned, follows. I.e., placing of the Latvian

national flag on residential buildings owned by natural persons promotes the protection of the democratic structure of the State and is needed by society to increase its welfare. The obligation to place the Latvian national flag on residential buildings owned by natural persons strengthens the security of the state and, thus, is compatible with the aims included in the second part of Article 10 of the Convention.

15.2. The Constitutional Court notes: in the case under review it is important that the Latvian national flag is the symbol of the state that has been enshrined in the Satversme and that the symbolic status of the Latvian national flag has been established in Para 5 of Section 2 of Law on the National Flag. The regulation on the Latvian national flag has been included in Article 4 of the Satversme since its adoption in 1922. Article 1, 2, 3, 4, 6 and 77 form the constitutional law foundations for the State of Latvia.

The Latvian national flag is a value with ancient history. The red-white-red colours of the flags mentioned in written sources of the 13th century have been indicated as the possible origins of the Latvian national flag (*see: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. Rīga: Latvijas Vēstnesis, 2014, 319. lpp.*).

The national flag as the symbol of the state has an important role in shaping awareness of the statehood and strengthening it in all stages of the national history. For example, the special symbolic role of the Latvian national flag during the period of Soviet occupation and the Third Awakening has been highlighted (*see: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof. R. Baloža zinātniskajā vadībā. Rīga: Latvijas Vēstnesis, 2014, 324. lpp.; Bergmane A. Mūsu karoga stāsti: 1940–1991. Rīga: Lauku Avīze, 2015*). The Latvian national flag symbolizes the historical process of the consolidation of the Latvian nation, as well as the fight for independence and a democratic state of Latvia. The dates specified by the Saeima, on which the Latvian national flag must be placed on, among others, also the residential buildings owned by natural persons, mark historical

events important for the establishment and existence of the State of Latvia. Thus, the Latvian national flag as the symbol of the state is also an integral element in the constitutional and international identity of the Latvian state.

The obligation to place the Latvian national flag on residential buildings strengthens the awareness of statehood and, thus, also the democratic Republic of Latvia, where fundamental rights can be effectively exercised. Stable awareness of the statehood shows that citizens perceive their state as a value *per se*, and such awareness of the statehood can develop only under democracy, when citizens can freely express their views (*see: Vēbers E. Valstiskā apziņa politiskās nācījas struktūrā. Grām.: Pilsoniskā apziņa. Vēbers E. (red.). Rīga: Latvijas Universitātes Filozofijas un Socioloģijas institūts, Etnisko pētījumu centrs, 1998, 43. lpp.*). The Constitutional Court has expressed the finding that the right to the freedom of speech characterises the democratic structure of the state, and the scope of this right – the democratic society (*see Judgement of 29 October 2003 by the Constitutional Court in Case No. 2003-05-01, Para 31.3*). Likewise, during the debates at the Saeima, dedicated to reviewing the draft Law on the National Flag, the need to strengthen the awareness of statehood was underscored, referring to the complex historical circumstances at the time of establishing Latvia as a democratic state (*see transcript of the Saeima sitting of 15 October 2009*).

Thus, the restriction upon fundamental rights has been established to reach the legitimate aim referred to in Article 116 of the Satversme – to protect the democratic structure of the State of Latvia

16. To determine, whether the rights restriction established by the contested norms should be considered as being proportional, the Constitutional Court examines, whether the chosen restrictive measures are appropriate for reaching the legitimate aim, whether the aim cannot be reached by other measures, less restrictive upon an individual's rights, and whether the benefit that the established restriction gives to society exceeds the damage caused to an individual (*see, for example, Judgement of 22 December 2008 by the*

Constitutional Court in Case No. 2008-11-01, Para 13, Judgement of 5 June 2003 in Case No. 2003-02-0106, Para 4 of the Findings, and Judgement of 29 October 2003 in Case No. 2003-05-01, Para 34).

16.1. The Constitutional Court must establish, whether the restriction upon the freedom of speech that the contested norms comprise is an appropriate measure for reaching the legitimate aim in a democratic society.

The Saeima notes that the established rights restriction is appropriate for reaching its legitimate aim, since placing of the Latvian national flag on residential building ensures not only that all residents of the particular building participate in common commemoration of the respective historical events, but also that “noteworthy part of the rest of society is reached” by this. The Ministry of Justice has also expressed a similar opinion.

The Saeima and the persons summoned in the case, in providing grounds for the obligation to place the Latvian national flag on residential buildings, underscore that the history of development of Latvia as a democratic state and the political situation, requiring that common historic memory is maintained and consolidates, must be taken into consideration. The historical and constitutional peculiarities of each state may determine the choice of special measures for reaching the legitimate aim that has been set. In Latvia the obligation to place, on the dates specified by the Saeima, the Latvian national flag on residential buildings should be considered as being such special choice. The grounds for introducing such special measures have been recognised also in the ECHR case law (*see, for example, Judgement of 16 March 2006 by the Grand Chamber of ECHR in Case “Ždanoka v. Latvia”, Application No. 58278/00, Para 95 and Para 121*).

In reviewing the appropriateness of the selected measure in the case under review, it must be taken into consideration that the expression of beliefs showing loyalty to the state should be separated from expressing opinions showing loyalty to a particular ideology or political force (*see Judgement of 27 April 2010 by the Grand Chamber of ECHR in Case “Tănase v. Moldova”, Application No. 7/08, Para 166 and Para 167*). The necessity to separate the

views has been recognised also by the Saeima (*see Case Materials, pp. 174 - 175*), emphasizing that the imposed obligation does not demand expressing opinion that would be loyal to any political force.

The Constitutional Court also holds that the obligation to place the Latvian national flag upon residential buildings owned by natural persons is an appropriate measure, by which a large part of society is informed, reminding of historical events important for the state of Latvia.

Thus, it can be concluded that the obligation to place, on the dates specified by the contested norms of Law on the National Flag, the Latvian national flag on residential buildings owned by private persons is an appropriate measure for reaching the legitimate aim.

16.2. The Constitutional Court must also examine, whether more lenient measures do not exist for reaching the legitimate aim and whether the legislator has examined the suitability of other measures, less restrictive upon individuals' rights.

Both the Applicant and the Ombudsman express the opinion that it would be possible to facilitate commemoration of historical events by other measures, for example, by informing inhabitants about historical events, explaining the significance of these events in the history of Latvia and the world, as well as by urging to commemorate and honour the participants of these events. The Saeima, in turn, has noted that the legitimate aim of the restriction cannot be reached in equal quality by other measures, for example, by the educational activities referred to by the Applicant.

A restriction upon fundamental rights is proportional only if no other measures exist that would be as effective and the choice of which would allow placing more lenient restrictions upon fundamental rights. In examining, whether the legitimate aim could be reached by more lenient measures, it should be taken into consideration that a more lenient measure is not just any other measure, but such that would allow reaching the legitimate aim in the same quality (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings*).

The measures that the Applicant refers to as being less restrictive upon an individual's rights and the measures chosen by the legislator do not reach the aim in the same quality. Visual demonstration of the state symbols (placing the national flag on buildings) differs in quality from other measures, for example, educational activities, in particular, with regard to the size of the audience that can be reached immediately and simultaneously. Thus, these measures cannot be considered as being mutually replaceable, as to the quality, and equally effective.

Thus, the Constitutional Court concluded that no more lenient measures existed for reaching the legitimate aim of the restriction upon fundamental rights.

16.3. In examining the compatibility of the restriction upon fundamental rights with its legitimate aim, it must be verified, whether the adverse consequences caused to an individual by restricting his or her fundamental rights do not exceed the benefit that the society in general gains from this restriction. I.e., the interests to be balanced in the case must be identified, as well as the interest that should be granted priority (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 15*). In this case the Constitutional Court must establish, whether the public benefit from the application of contested norms exceeds the damaged inflicted upon an individual's rights.

16.4. The Constitutional Court has noted the constitutional significance of the Latvian national flag as a symbol of the state. Likewise, it was concluded that the obligation to place the Latvian national flag on residential buildings on the dates specified by the Saeima was established with the aim of strengthening the democratic structure of the State, immediately and simultaneously informing society about historical events important for the existence of the Latvian state. Thus the awareness of statehood under the conditions of democracy is strengthened. The Constitutional Court holds that the civic obligation of placing the Latvian national flag on residential buildings gives significant benefit to society in general.

The obligation to place the Latvian national flag on the residential buildings owned by natural persons on the dates specified by the Saeima should not be recognised as being excessive restriction upon the negative aspect of the Applicant's freedom of expression. In a state, where the need for measures to strengthen the awareness of statehood is still recognised, the benefit to society exceeds the damage caused to an individual's rights.

Thus, the obligation established in the contested norms of Law on the National Flag to place the Latvian national flag on residential buildings owned by natural persons is proportional, and therefore the contested norms of Law on the National Flag comply with Article 100 of the Satversme.

16.5. The Constitutional Court notes: the fact that a penalty is envisaged for failing to place the Latvian national flag on the residential buildings owned by natural person on the dates specified by the Saeima changes the legal nature of the restriction upon an individual's fundamental rights. I.e., it could be possible that the Latvian national flag is placed on the residential building only because of the established penalty and not in commemoration of the historical events important for the Latvian state. A number of summoned persons in the case have also underscored this. For example, the Ministry of Justice has recognised the impact of the penalty upon the actual actions by an individual, noting that if the penalty had not been envisaged, very probably, the obligation to place the Latvian national flag on residential buildings in many places would not be performed at all (*see Case Materials, p. 132*). The Ombudsman has also underscored the impact of the envisaged penalty upon an individual's actual actions, i.e., placing of the Latvian national flag on a residential building "in fear of possible administrative penalty" (*see Case Materials, p. 146*).

During the debates before adopting the draft Law on the National Flag in second reading a number of members of the Saeima, for example, V. Buzajevs, I. Druviete, K. Šadurskis spoke in favour of the obligation to place the Latvian national flag on residential buildings owned by natural persons, linking it to the penalty for failing to perform this obligation,

envisaged in the Latvian Administrative Violations Code. V.Buzajevs noted that “it is the matter of [...] choosing the conception – either coerced patriotism or voluntary patriotism”. Whereas I. Druviete asked to consider amending LAVC, thus “releasing from the mandatory obligation to hoist the national flag those persons, who due to their physical condition are simply unable to do it.” K. Šadurskis also pointed to the possible disproportionality of the envisaged penalty, by underscoring that “the application of penal norms in the case of not placing the flag should be reconsidered” (*see transcript of the Saeima sitting of 15 October 2009*).

I. Ijabs also noted the negative impact of the established penalty, underscoring that “patriotism and understanding of the development of democracy, basically, is founded upon other factors and not upon obligations, imposed by law, to perform certain rituals” (*see Case Materials, p. 130*). I. Ijabs expresses the opinion that no “acute social need” can be discerned in connection with the imperative obligation to place the Latvian national flag on residential buildings owned by natural persons, which has been indicated in the ECHR case law as a necessary pre-condition for recognising a restriction upon an individual’s right as being proportional (*see, for example, ECHR Judgement of 8 July 2008 in Case “Vajnai v. Hungary”, Application No. 33629/06, Para 43, and Judgement of 6 May 2003 in Case “Perna v. Italy”, Application No. 48898/99, Para 39.b*).

The Constitutional Court notes: if it is possible that an individual will be punished for not expressing one’s opinion, than this aspect influences not only the incentives for the individual’s actual actions in a particular situation, but also other expressions of an individual’s freedom of speech.

16.6. The Constitutional Court does not uphold the opinion expressed by the Saeima that the hoisting of the Latvian national flag as a technical activity is an obligation that follows only from the fact that the person owns a residential building (*see Case Materials, p. 101*). By equalling the placing of the Latvian national flag on the building to the placing of its number plate the constitutional significance of the Latvian national flag is downplayed. The

placing of the Latvian national flag as the state symbol on the residential building can influence an individual and his views and, thus, cannot be recognised as being a neutral, technical activity.

The development of the awareness of statehood must be facilitated in compliance with the principle of a democratic state established in the Satversme. During the stage when the democratic structure of the State was created and consolidated, a pronouncedly imperative approach to defining civic obligations in connections with the development of the awareness of the statehood could have been necessary and even commensurate. However, there are no grounds for ensuring this process in a longer period of time by penalties, in particular, if the negative aspect in an individual's freedom of speech is infringed upon.

The Constitutional Court has already recognised that an individual has obligations towards society and that the establishment of such obligations by law is valid (*see Para 16.4 of this Judgement*); however, establishing a penalty for ensuring that obligations of civic nature are performed can be recognised as being proportional only in exceptional cases. In a democratic state, alongside imperative measures, also preconditions of general nature should be created for voluntary performance of civic obligations, which primary are based not upon fear of punishment, but in the awareness of the statehood, which finds respective manifestations in the actions and behaviour of an individual.

If the existing legal order in the state ensures that an individual is not punished for expressing one's opinion or refraining to do so in a legal way, then the optimum legal environment for an individual's self-expression is ensured.

16.7. In the case under review, the penalty envisaged in the contested LAVC norm for failure to place the Latvian national flag on residential buildings owned by natural persons not only leaves an impact upon the actual actions taken by an individual; i.e., forces him to perform the obligation – on the dates specified in law, to place the Latvian national flag on his residential building (primary impact), but also causes a negative impact upon the

manifestations of the freedom of speech in society in general (secondary impact). The ECHR case law underscores that the possible penalty that has been envisaged for an individual in the field of the freedom of speech leaves a negative impact upon the freedom of speech in society as a whole (*see, for example, Judgement of 10 December 2007 by the Grand Chamber of ECHR in Case “Stoll v. Switzerland”, Application No. 69698/01, Para 153 and Para 154*). In relation to this it has been recognised that the introduction of even minor penalties in the field of freedom of speech leaves a negative impact (*chilling effect*) upon society in general and therefore is admissible only in exceptional cases (*see, for example, ECHR Judgement of 21 March 2002 in Case “Nikula v. Finland”, Application No. 31611/96, Para 54 and Para 55, and Judgement of 14 March 2013 in Case “Eon v. France”, Application No. 26118/10, Para 61*).

If a legislator establishes an administrative penalty linked to a restriction upon the negative aspect of the freedom of speech, then it should provide sufficient substantiation for it. It has been recognised in the ECHR case law that the decisive condition for establishing the disproportionality of the penalty linked to a restriction upon the freedom of speech is not the severity of the penalty, but the fact that the legislator has not provides sufficient substantiation for the necessity of the penalty [*see, for example, Judgement of 26 September 1995 by the Grand Chamber of ECHR in Case “Vogt v. Germany”, Application No. 17851/91, Para 52 (ii), Para 52 (iii) and Para 53, ECHR Judgement of 27 May 2003 in Case “Skalka v. Poland”, Application No. 43425/98, Para 35 and Para 38, and Judgement of 14 March 2013 in Case “Eon v. France”, Application No. 26118/10, Para 52*]. The case materials do not lead to assurance that with regard to the contested LAVC norm the Saeima has provided sufficient substantiation regarding the existence of an exceptional case.

The restriction upon an individual’s freedom of speech, by establishing a penalty, cannot be justified by general assumptions regarding special social need (*see, for example, ECHR Judgement of 8 July 2008 in Case “Vajnai v.*

Hungary”, Application No. 33629/06, Para 55). The Saeima has pointed to the circumstances that were relevant at the time when the contested norms were adopted; however, it has not substantiated the current necessity for an administrative penalty as an element in the restriction upon the freedom of speech in a democratic society. The freedom of speech in its negative aspect manifests itself as refraining from active actions. If an individual by his action endangered democratic society or other persons’ interests, then there would be grounds to apply, for example, Section 93 of the Criminal Law, which provides for criminal liability for desecration of state symbols, *inter alia*, the Latvian national flag. An individual’s freedom of speech in its negative aspect does not manifest itself as such, potentially endangering action, but as refraining from active actions.

16.8. The contested LAVC norm, due to the considerations presented above, leaves an impact upon an individual’s freedom of speech and therefore should be recognised as a disproportional restriction upon an individual’s rights, which is not necessary in a democratic society. Establishing a sanction for not expressing one’s opinion is inadmissible in a democratic society.

Thus, the restriction included in the contested LAVC norm, insofar it established a penalty for failure to place the Latvian national flag upon residential buildings owned by natural persons, is disproportional and is incompatible with Article 100 of the Satversme.

The Substantive Part

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

h e l d :

1. To recognise the first and the second part of Section 7 of Law on the National Flag of Latvia as being compatible with Article 100 of the Satversme of the Republic of Latvia.

2. To recognise Section 201⁴³ of the Latvian Administrative Violations Code, insofar it established penalty for failure to place the Latvian national flag on residential buildings owned by private persons in accordance with the first and the second part of Section 7 of Law on the National Flag of Latvia, as being incompatible with Article 100 of the Satversme of the Republic of Latvia.

The Judgement is final and not subject to appeal.

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

Chairperson of the court hearing A.Laviņš