



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 15 February 2024

in Case No. 2023-04-0106

The Constitutional Court of the Republic of Latvia, comprised of: chairperson of the court hearing Aldis Laviņš, Judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

with the participation of sworn advocate Inese Nikuļceva, the representative of applicants Vera Fenchenko, Tatiana Vilkel, Miroslava Pavlyukanets and Anna Sokolova, and Elizabete Krivcova, the representative of applicants Sergey Savinkov, Lidia Bondareva, Liudmila Klagisha, Anna Baleiko, Maria Sokolova, Natalia Titimova, Elena Logunova, Oleg Besedskiy, Natalia Emelianova, Alevtina Suntsova, Natalia Pavlenko, Olga Trushkova, Nikolay Zhuravlev, Nikolai Pronin, Olga Pastore, Galiya Venland, Maria Zeltynya, Tatiana Plotnikova, Raisa Shaidullina, Evgenii Goliandin, Tamara Udolets, Galina Savina, Elena Muradova, Alexander Shcherbakov and Tatiana Venkova,

Vilnis Vītoliņš, the authorised representative of the institution, which issued the contested act, the *Saeima* [the Parliament],

with Paula Marta Daugavvanaga-Vanaga as the secretary of the court hearing,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 1 and Para 6 of Section 16, Para 11 of Section 17 (1), as well as Section 19² and Section 28 of the Constitutional Court Law,

examined, in Riga, on 9, 11, 15 and 16 January 2024 at an open court hearing, with the participants in the case present, the case

“On Compliance of Para 58 of Transitional Provisions of Immigration Law and Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of the Immigration Law is deleted by it, with Article 1, the First Sentence of Article 91, Article 96 of the Constitution of the Republic of Latvia, as well as Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

The Facts

1. On 31 October 2002, the *Saeima* adopted Immigration Law, which entered into effect on 1 May 2003. Para 8 of Section 24 (1) of this Law provided that a foreigner, living in Latvia, who prior to obtaining the citizenship of another state had been a citizen of Latvia or a non-citizen of Latvia, had the right to apply for a permanent residence permit in the procedure, set out in this Law.

On 22 September 2022, the *Saeima* adopted the law “Amendments to Immigration Law”, which entered into effect on 24 September 2022 (hereafter also – the First Amendments). Section 5 of this Law deleted from Immigration Law, *inter alia*, Para 8 of Section 24 (8). Section 58, in turn, was added to Transitional Provisions of Immigration Law, providing that for a citizen of the Russian Federation, who had received a permanent residence permit in accordance with Para 8 of Section 24 (1) of this Law, the permanent residence permit would be valid until 1 September 2023. If a person wants to receive the permanent residence permit repeatedly, he or she must, by 1 September 2023, submit certification regarding the proficiency in the official language in accordance with the provisions of Section 24 (5) of this Law. If any of the conditions defined in Section 34 (1) of this Law (hereafter jointly – the contested regulation) sets in, a permanent residence permit is not issued to the person.

On 5 April 2023, the *Saeima* adopted the law “Amendments to Immigration Law”, which entered into effect on 20 April 2023 (hereafter also – the Second Amendments). By this Law, Para 58 of Transitional Provisions of Immigration Law was expressed in new wording :

“For a citizen of the Russian Federation who has received a permanent residence permit in accordance with Para 4 of Section 24 (1) of this Law, the permanent residence permit shall be valid until:

1) 1 September 2023 if the Office has not received the necessary documents for requesting the European Union long-term resident status by the abovementioned date;

2) 31 December 2023 in respect of a person who is required to provide a certification of proficiency in the official language in order to request the European Union long-term resident status if the Office has received information by 1 September 2023 that this person has taken an examination of the proficiency in the official language at least once by 1 September 2023 and this person has been assigned a repeated examination of the proficiency in the official language to be taken by 30 November 2023, but the Office has not received the necessary documents for requesting the European Union long-term resident status by 31 December 2023;

3) the day when the final ruling enters into effect in the case regarding requesting the European Union long-term resident status if the person has submitted the necessary documents for requesting this status.”

Moreover, Para 58¹, 58², 58³ and 58⁴ also were added to Transitional Provisions.

Consecutively, on 14 September 2023, the *Saeima* adopted the law “Amendments to Immigration Law”, which entered into effect on 19 September 2023 (hereafter also – the Third Amendments). Paras 58⁵, 58⁶, 58⁷, 58⁸, 58⁹, 58¹⁰ and 58¹¹ were added to Transitional Provisions of Immigration Law by this Law.

2. Four cases regarding the constitutionality of those provisions, included in Immigration Law, which pertain to a permanent residence permit for a citizen of the Russian Federation were initiated:

1) on 28 February 2023, on the basis of application by Vera Fenchenko, Tatiana Vilkel, Miroslava Pavlyukanets and Anna Sokolova, case No. 2023-04-01 “On Compliance of Para 58 of Transitional Provisions of Immigration Law with Article 1, the First Sentence of Article 91 and Article 96 of the Constitution of the Republic of Latvia”;

2) on 1 March 2023, on the basis of application by Sergey Savinkov, Lidia Bondareva, Liudmila Klagisha, Anna Baleiko and Maria Sokolova, case No. 2023-05-01 “On Compliance of Para 58 of Transitional Provisions of

Immigration Law with Article 1, the First Sentence of Article 91 and Article 96 of the Constitution of the Republic of Latvia”;

3) on 6 March 2023, on the basis of application by Natalia Titimova, Elena Logunova, Oleg Besedskiy, Natalia Emelianova, Alevtina Suntsova, Natalia Pavlenko, Olga Trushkova, Nikolay Zhuravlev, Nikolai Pronin and Olga Pastore, case No. 2023-06-01 “On Compliance of Para 58 of Transitional Provisions of Immigration Law and Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of the Immigration Law is deleted by it, with Article 1, the First Sentence of Article 91, Article 96 of the Constitution of the Republic of Latvia”;

4) on 8 March 2023, on the basis of application by Galiya Venland, Maria Zeltynya, Tatiana Plotnikova, Raisa Shaidullina, Evgenii Goliandin, Tamara Udolets, Galina Savina, Elena Muradova, Alexander Shcherbakov and Tatiana Venkova, case No. 2023-07-0106 “On Compliance of Para 58 of Transitional Provisions of Immigration Law and with Article 1, the First Sentence of Article 91, Article 96 of the Constitution of the Republic of Latvia, as well as Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

Pursuant to Section 2 (6) of the Constitutional Court Law, these cases were joined into one case.

Joint case No. 2023-04-0106 was entitled “On Compliance of Para 58 of Transitional Provisions of Immigration Law and Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of the Immigration Law is deleted by it, with Article 1, the First Sentence of Article 91, Article 96 of the Constitution of the Republic of Latvia, as well as Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms”.

3. The applicants – Vera Fenchenko, Tatiana Vilkel, Miroslava Pavlyukanets, Anna Sokolova, Sergey Savinkov, Lidia Bondareva, Liudmila Klagisha, Anna Baleiko, Maria Sokolova, Natalia Titimova, Elena Logunova, Oleg Besedskiy, Natalia Emelianova, Alevtina Suntsova, Natalia Pavlenko, Olga Trushkova, Nikolay Zhuravlev, Nikolai Pronin, Olga Pastore, Galiya Venland, Maria Zeltynya, Tatiana Plotnikova, Raisa Shaidullina, Evgenii Goliandin, Tamara Udolets, Galina Savina, Elena Muradova, Alexander Shcherbakov and Tatiana Venkova (hereafter –

the Applicants) – hold that the contested regulation is incompatible with Article 1, the first sentence of Article 91, Article 96 of the Constitution of the Republic of Latvia (hereafter – the Constitution) and Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention).

The Applicants are citizens of the Russian Federation who have been issued a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. Allegedly, the contested regulation sets out that the permanent residence permit, issued to them, becomes invalid, therefore, to continue residing in Latvia, these persons must receive a new residence permit, meeting the respective conditions.

The persons, to whom the contested regulation applies, have received the permanent residence permit in a simplified procedure, and legal provisions had presumed that recent belonging to the circle of Latvian citizens or non-citizens was a sufficient proof of a person's close ties to Latvia and that the person, by living in Latvia for many years, had become integrated in it. The annulment of the permanent residence permit is said to constitute major changes, and failure to meet the new requirements, in the Applicants' opinion, would create significant restrictions to them. Likewise, moving to another state, with the citizenship being the only connection to it, is said to be cumbersome.

3.1. Due to the permanent residence permit becoming invalid, the Applicants' right to inviolability of private and family life, included in Article 96 of the Constitution, is said to be restricted. Allegedly, Article 96 of the Constitution provides for the right to establish and develop relationships with other persons and to develop one's personality.

The Applicants hold that the restriction on fundamental rights has not been established by a law, adopted in due procedure, because the legislator had not examined the compliance of the contested regulation with superior legal provisions – the Constitution and the Convention. The legislator has chosen the strictest solution, without assessing the proportionality of the restriction on fundamental rights. Moreover, in the course of adopting the contested regulation, the capacity of institutions for implementing this regulation had not been assessed, i.e., neither the Office of Citizenship and Migration Affairs (hereafter – the Office), nor the National Centre for Education (hereafter – the Centre) has sufficient capacity for implementing it. Moreover, the First Amendments had not been clear and had mislead persons because they had not made it clearly understood that a foreigner,

upon submitting certification regarding the proficiency in the official language, had the right to receive the status of a long-term resident of the European Union but not the permanent residence permit, by meeting a number of additional conditions that had not been referred to in the contested regulation.

The Applicants agree that the legitimate aim of the restriction on fundamental rights, included in the contested regulation, is to reinforce public security. However, it is alleged that this restriction on fundamental rights is not suitable for reaching the legitimate aim. It has not been explained either in the annotation to the draft law or its preparatory materials, or at the sittings of the *Saeima* what risks to the national security are posed by persons who have acquired the citizenship of the Russian Federation and who reside in Latvia on the basis of a permanent residence permit. Likewise, no data had been provided on the involvement of such persons in, for instance, warfare. Upon receiving a permanent residence permit in the procedure, set out in Para 8 of Section 24 (1) of Immigration Law, all other former citizens and non-citizens of Latvia, who had obtained the citizenship of another state, had not been required to prove their proficiency in the official language. Thus, the fact that the citizens of the Russian Federation were not required to prove their proficiency in the official language, upon receiving a permanent residence permit in the procedure, set out in Para 8 of Section 24 (1) of Immigration Law, cannot be regarded as decisive circumstance for preventing a security threat. The Applicants hold that the chosen measure could be suitable if stricter requirements were set with respect to persons who had denounced the status of a Latvian citizen or non-citizen in favour of the citizenship of the Russian Federation after 24 February 2022. The discussions held at the sitting of the *Saeima* allow concluding that the contested regulation has a foreign policy aim – to cause difficulties for the citizens of the Russian Federation and to send a strong signal to the Russian Federation; however, it is maintained that political interests cannot be a legitimate aim for a restriction on fundamental rights.

The alternative, initially developed by the Cabinet, which had envisaged a longer period of time for meeting the new requirements, as well as, in case of failing to meet the new requirements, retaining the right for these persons to reside in Latvia on the grounds of a temporary residence permit, would be a measure that would restrict a person's fundamental rights to a lesser extent. Likewise, individual assessment of each case with respect to the annulment of the permanent residence permit would be a measure, restricting a person's fundamental rights to a lesser extent. Finally, the legitimate aim of the restriction on fundamental rights could be

reached also through the mechanism of sanctions – introducing sanctions with respect to individual citizens of the Russian Federation.

In aligning a restriction on a person's fundamental rights with the interests of public security, individual assessment of each case should be ensured. A restriction of such a broad nature cannot be deemed to be proportional.

3.2. With respect to the compliance of the contested regulation with Article 91 of the Constitution, the Applicants point out that all former citizens and non-citizens of Latvia who have become citizens of another state and have received permanent residence permits in accordance with Para 8 of Section 24 (1) of Immigration Law are in comparable circumstances.

It follows from the annotation to the contested regulation that the residence of citizens of the Russian Federation causes risks for Latvia that are related to the war in Ukraine and not to the actions by those citizens of the Russian Federation who had received the permanent residence permit in a simplified procedure.

If the politics implemented by the state of citizenship is the decisive criteria for establishing differential treatment then the respective risks are linked to the citizens of any non-democratic state. Allegedly, the applicants do not constitute such special category of people to make different legal regulation applicable only to them. However, it is contended that the contested regulation established differential treatment by singling out among all foreigners one group – citizens of the Russian Federation – and envisaging the annulment of the permanent residence permit only for them. Allegedly, the preparatory materials for the contested regulation do not comprise information about the kinds of national security risks that are linked to exactly this group of foreigners and whether these risks are greater compared to the risks caused by other foreigners.

The differential treatment has not been established by law, moreover, the measures chosen by the legislator are not suitable, necessary and proportionate due to the same considerations that have been pointed out with respect to the incompatibility of the contested regulation with Article 96 of the Constitution.

3.3. The Applicants state that the contested regulation violates the principle of legitimate expectations. Their rights had been clearly defined in Para 8 of Section 24 (1) of Immigration Law, whereas the cases when the residence permit was annulled – in Section 36. Their legal status had been worsened by the adoption of the contested regulation. Such deprivation of rights could be admissible only in exceptional cases.

The contested regulation is said to have retroactive effect because the Applicants must meet such requirements that they could not have known about before, i.e., requirements with regard to continuous residence in Latvia, sufficient and regular income and certification proving proficiency in the official language.

The Applicants note: had they known that, in their old-age, they would have to prove their proficiency in the official language they would have taken care of it earlier when they had been in good health, had good memory and stress tolerance.

The permanent residence permit had been issued by an administrative act and permanent, non-terminated right had been granted by this act. Para 8 of Section 24 (1) of Immigration Law had been in effect for 19 years and this period had been sufficiently long for persons to develop legitimate expectations regarding the unchangeability of such legal regulation. Persons could have expected to retain the acquired status until the end of their lives.

Becoming a citizen of a certain state and acquiring a permanent residence permit is said to be a long-term decision, thus, a person cannot be expected to change their nationality depending on political changes and the prestige of the state.

3.4. It is maintained that the contested regulation violates Article 4 of Protocol 4 to the Convention since it does not provide for individual assessment of each case. It is confirmed also by the annotation to the draft law, which points to inevitable and increased risks to the national security that are linked to the residence of the citizens of the Russian Federation in Latvia. Allegedly, the grounds for depriving of rights are not linked to the actions of an individual but the actions of the state of persons' citizenship and, thus, comply with the concept of collective expulsion of foreigners.

3.5. After the Second Amendments entered into effect, the Applicants submitted additional explanations related to them.

Although the terms for annulling permanent residence permits had been extended and been differentiated, and this has a positive effect, the substance of the contested regulation had remained unchanged, i.e., legal provisions continue envisaging annulment of permanent residence permits. The compliance of the contested regulation, as well as of the legal provisions, which have entered into effect by the Second Amendments, with superior legal provisions should be assessed.

The reference that had misled persons regarding the possibility of acquiring a new permanent residence permit had been rectified by the Second Amendments,

and now the clear reference is made regarding the possibility of acquiring the status of a long-time resident of the European Union. Likewise, the indicated deficiency, related to the Office's capacity, has been rectified by providing that the Office has to make the decision within a year. However, adoption of the Second Amendments had taken only five business days and the term for submitting proposals had been too short – one day. Allegedly, it is impossible to make full assessment of the compliance of a legal provision with superior legal provisions within terms that are so short.

The Applicants point out that it had been possible to ensure to full extent the examinations of the proficiency in the official language only from 26 May 2023 when amendments to the Cabinet Regulation of 8 March 2022 No. 157 ("Regulation Regarding the Extent of the Knowledge of the Official Language and the Procedures for Examining the Proficiency in the Official Language" (hereafter – Regulation No. 157), which regulates the procedure, in which the citizens the Russian Federation register for and take the official language examination if they had not registered for it until 24 March 2023, as well as sets out the procedure for re-taking the examination with a certain period of time, entered into effect.

Allegedly, due to legal uncertainty, frequent amendments to the legal regulation and contradictory statements made by various institutions, the Applicants are unable to make meaningful adjustments to the changes and this leaves adverse consequences upon their health, as well as decreases their opportunities for regaining the rights that they have been deprived of. Moreover, the examination of the proficiency in the official language is taken in digital environment but the majority of Applicants are said to lack the relevant computer skills.

The *Saeima* had declined to assess the unequal treatment, i.e., that the contested regulation does not apply to those citizens of the Russian Federation who, as former citizens or non-citizens of Latvia, had received the permanent residence permit on the basis of the legal provisions of the law that had been formerly in effect – "On Entry and Residing of Foreigners and Stateless Persons in the Republic of Latvia" (hereafter – Law on Foreigners).

3.6. At the court hearing, sworn advocate Inese Nikuļceva, the representative of one group of Applicants, noted that preventive mitigation of security risks, without referring to particular threats, could not be the grounds for making the already issued residence permits invalid.

Elizabete Krivcova, the representative of the other Applicants, pointed out at the court hearing: although the contested regulation had been amended, the dispute, on which the case is based, has not been resolved because the loss of the permanent residence permit is still envisaged. Likewise, the problems linked to the requirements regarding continuous residence in Latvia and sufficient financial resources had not been resolved.

4. The *Saeima*, the institution that issued the contested act, states that the contested regulation conforms with Article 1, the first sentence of Article 91, Article 96 of the Constitution, as well as Article 4 of Protocol 4 to the Convention.

After the contested regulation had entered into effect, the legislator had monitored the situation regularly and heard competent authorities at the sittings dedicated to implementation of this regulation. Naturally, the aim of the Second Amendments had been to ensure to the respective citizens of the Russian Federation more proportionate transition to the new legal regulation. Para 58 in Transitional Provisions of Immigration Law, in the contested wording thereof, had not caused actual infringement on rights for a single person. Hence, in assessing the compliance of the contested legal regulation with superior legal provisions, it is essential to take into consideration the Second Amendments, which grant to any person a real possibility for obtaining the status of a long-term resident of the European Union. However, it is important that the legislator had not wished, by the Second Amendments, to relinquish the requirement, established in the First Amendments, regarding the need to take the examination of the proficiency in the official language.

4.1. Allegedly, the contested regulation is aimed at reinforcing national security. Safeguarding the national security is said to be the basic obligation of the State because the State should provide for its security in any conditions and the precautionary principle is applicable to the protection of national security. The State enjoys broad discretion in choosing measures to be implemented for the sake of national security.

The military attack on Ukraine launched by Latvia's neighbouring state – the Russian Federation – makes it necessary to pay special attention to the protection of national security and to consider new measures for protecting national security. Moreover, the Russian Federation is not only a state that has borders with Latvia but also, for a prolonged period of time, has threatened national

security of Latvia. During the previous year, its policy has turned openly hostile not only towards Ukraine but also the whole Western world.

The invasion by the Russian Federation in Ukraine has reminded the Latvian society how fragile the State's independence is, confirmed the need for constant improvements to the national security system and the range of tools available to the responsible institutions in the area of security. The attack upon Ukraine has highlighted several parallels with the situation in Latvia because, as in Ukraine, the Russian diaspora here is large. Moreover, similarly to Ukraine, many inhabitants had been ready to provide support to the Russian occupation forces, likewise, a number of "pro-Kremlin" foundations operate also in Latvia.

Undoubtedly, the aggressive actions by the Russian Federation cannot be automatically attributed to all its citizens. However, Russian citizenship is one of those risk factors that cannot be left unconsidered when thinking about protection of the national security. Both the European Union and Latvia have recognised the Russian Federation as a state sponsor of terrorism. Even before adoption of the contested regulation, Latvia had established mandatory in-depth screening for citizens of the Russian Federation before issuing any visa or residence permit and, thus, already had equalled citizens of the Russian Federation, in terms of the degree of risk related to them, to the citizens of such states as, for example, the Islamic Republic of Afghanistan, the Republic of Iraq, the Islamic Republic of Iran.

In all cases when the permanent residence permit had been issued to the citizens of the Russian Federation on the basis of Para 8 of Section 24 (1) of Immigration Law, they themselves had made the choice in favour of the citizenship of another state – that of the Russian Federation. Moreover, in many instances this choice had been made after the Russian Federation had occupied the Crimean Peninsula.

The warfare carried out by the Russian Federation is contrary to its commitments that follow from Article 2 of the Statute of the United Nations Organisation and imperative international law provisions. Pursuant to contemporary international law, any state has the right to direct against the state that violates its commitments vis-à-vis the international community as a whole such measures that aim to ensure elimination of violations and reparations in the interests of the victim state. Moreover, all states have the obligation to cooperate in order to put an end to, by legal means, substantial and systemic violations of the respective provisions.

4.2. Allegedly, the contested regulation applies only to one category of persons and all these persons had received a permanent residence permit without examination of their proficiency in the official language.

In Latvia's historical context, linguistic issues cannot be examined in isolation from the policy implemented by the Soviet occupational regime, *inter alia*, in the field of languages, where the Russian language was in a privileged position for a long time, and the complicated ethno-demographic situation that has developed as the result of this policy. The need for eliminating the consequences of the Soviet occupation persists since a considerable part of Latvia's nationals still are not sufficiently proficient in the Latvian language to be able to become fully included in the life of society.

The status of the official language, as well as that of a constitutional value has been granted to the Latvian language in the Constitution. The State has the obligation to use all possible measures to ensure that the Latvian language would, indeed, fulfil its function of the official language. Every member of the Latvian society needs the proficiency to use the official language on the level that would allow full participation in the life of a democratic state. Narrowing the use of the Latvian as the official language within the territory of the State should be regarded as a threat to a democratic state order.

Lack of proficiency in the official language also decreases the possibility of obtaining true information from secure sources of information, therefore, for the most part, those persons who do not know the official language turn into the potential victims of the propaganda of the Russian Federation.

4.3. Compliance of the contested regulation with Article 1 of the Constitution should be examined in conjunction with Article 96 of the Constitution, recognising the principle of legitimate expectations as one of the criteria, which characterise the lawfulness of a restriction on the right to private life.

The State has the right to regulate the entry and residence of foreigners in it, as well as their expulsion. Annulment of a permanent residence permit and the following removal from the state, indeed, infringe upon a person's right to private life. However, it follows from the contested regulation and the following amendments to Immigration Law that citizens of the Russian Federation are given a real opportunity to obtain another, equivalent legal status, ensuring to them the right to reside permanently in Latvia, i.e., the residence permit of a long-term resident of the European Union. A person is required only to pass the examination

of proficiency in the official language. Thus, it is a matter of personal choice whether the persons takes this opportunity. Thus, in the *Saeima's* opinion, the reason for a person's expulsion from the state would be the failure to act by the persons themselves rather than the contested regulation.

The restriction on fundamental rights, included in the contested regulation, had been established by a law, adopted in due procedure. The contested regulation, in particular, taking into account the Second Amendments, is said to be sufficiently clear and unambiguously defines the actions that a person has to take in order to obtain the new status. Likewise, at the time when the Second Amendments were adopted, both the Centre and the Office had confirmed their readiness to take all measures necessary for implementing these amendments.

The restriction on fundamental rights is said to have three legitimate aims – protection of the democratic state order, of public security, and of other persons' rights.

The measures chosen by the legislator are said to be suitable for reaching these legitimate aims. Firstly, the restriction on fundamental rights, included in the contested regulation, will strengthen the official language and, thus, also the democratic state order. Likewise, other persons' rights will be protected, in view of the fact that Latvian nationals have the right to freely use the official language in any area of life throughout the entire territory of the state. Secondly, as the result of the contested regulation, every citizen of the Russian Federation who submits the documents necessary for applying for the status of the long-term resident of the European Union will undergo in-dept screening. Thus, national security will be reinforced because this status may not be granted to a person who poses threats to national security. Thirdly, by excluding Para 8 from Section 24 (1) of Immigration Law, the simplified procedure for receiving a permanent residence permit has been terminated, thus, incentivising persons, wishing to reside in Latvia, to make a certain choice, to obtain the citizenship of Latvia and confirm their belonging to the cultural area of Latvia and Europe.

Allegedly, the Applicants had not provided the reasoning as to why the measures, less restrictive upon a person's fundamental rights, indicated by them, would be as effective in reaching the legitimate aims. Firstly, the draft law, submitted by the Cabinet, had envisaged both a considerably longer period of time, during which the received permanent residence permit would be valid, as well as a considerably longer term for providing certification regarding the proficiency in the official language. Thus, it is impossible to achieve, by this solution, the

legitimate aims in the same quality because the legislator, in adopting the contested regulation, had considered that a speedier solution was required. Secondly, the legislator's aim is to demand certification regarding the proficiency in the official language from all citizens of the Russian Federation, residing permanently on the territory of Latvia, thus, a solution that would envisage any exceptions could not be deemed to be a more lenient solution. Moreover, the regulation on examining the proficiency in the official language, substantially, already has been individualised because, for example, a person's age is taken into consideration. Thirdly, national or international sanctions, obviously, cannot be recognised as being a more lenient solution.

In assessing the proportionality of a restriction on fundamental rights, it should be taken into consideration that all Applicants are former non-citizens of Latvia who have been living on the territory of Latvia at least since the independence of the State was restored. Thus, these persons have lived for more than 30 years in a state where Latvian has been the only official language and where these persons, for a long time, had been given the possibility to become naturalised. The Applicants have decided, freely and consciously, not to obtain the citizenship of Latvia but to become citizens of the Russian Federation. Moreover, it follows from the applications that this choice had been, predominantly, based on considerations of financial nature.

It also should be taken into account that the legislator has ensured to all Applicants the possibility to take the examination of proficiency in the official language at least twice. It is important that the required level of proficiency in the official language to acquire a permanent residence permit in the Member States of the Council of Europe is exactly the same as the one defined in Latvia.

Neither does Article 8 of the Convention guarantee to a person the right to receive a certain type of residence permit, insofar the solution offered by the State does not impose such obstacles upon a foreigner that would prohibit them from exercising their right to private life. In Latvia, the legislator has ensured to all Applicants the possibility to acquire equivalent status that would ensure their legal protection to no lesser extent than a permanent residence permit.

As regards the principle of legitimate expectations, firstly, it should be taken into account that the contested regulation had been adopted with immediate and not retroactive effect because it impacts such legal relations that have not been concluded before this regulation enters into force. Secondly, the principle of protecting legitimate expectations does not envisage that a permanent residence

permit, issued to a person, would be valid until the end of this person's life. Thirdly, the problems that had been caused by the First Amendments had been eliminated by the Second Amendments, i.e., it is stipulated that the sufficient means of subsistence required for acquiring the status of a long-term resident of the European Union is also a pension granted to a person, *inter alia*, old-age pension of the Russian Federation. Likewise, the Second Amendments stipulate that the permanent residence permit will be valid until the date when the final decision in the case regarding granting the status of a long-term resident of the European Union will come into effect, provided that all the required documents have been submitted. Fourthly, reasonable procedure, in which a person can attest their proficiency in the official language, has been envisaged. At least 240 training hours are needed to learn the official language on elementary level, 2nd degree (A2) (hereafter – A2 degree), if there is no preliminary knowledge. A person who has taken the official language proficiency examination at least once but has failed it and who has to re-take it has been given more than a year's time for it.

Allegedly, the contested regulation does not violate the prohibition for collective expulsion of foreigners because it does not lead to such legal effects that a citizen of the Russian Federation, who has received the permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law, after a certain date would be removed from Latvia, without individual assessment. Persons are given the possibility to provide certification of their proficiency in the official language, moreover, individualised approach has been ensured because the term of validity of the permanent residence permit is extended, depending on the person's actions.

The procedure of expulsion is not regulated by the contested regulation but by entirely different legal provisions. Moreover, the contested regulation does not amend the legal provisions that regulate expulsion, nor change the fact that the procedure of expulsion is individualised and that every foreigner's situation is to be assessed within this framework. Namely, instances are envisaged when a person has the right to claim alternative status. Likewise, the possibility has been envisaged that the Minister for the Interior issues a citizen of the Russian Federation a permanent residence permit up to the term of five years if it complies with the interests of the State of Latvia or international commitments or is linked to humanitarian considerations. A person who receives the removal order may request extension of the term for fulfilling this obligation even up to a year. Likewise, a foreigner has the right to appeal against the removal order to a higher

authority, as well as to appeal the decision by the authority at the Administrative District Court.

In view of the above, it can be recognised that the benefit that society gains from the restriction on fundamental rights, included in the contested regulation, outweighs the harm inflicted upon the Applicants' rights and the contested regulation complies with Article 1 and Article 96 of the Constitution, as well as Article 4 of the Protocol 4 to the Convention.

4.4. The contested regulation does not violate the principle of legal equality, included in the first sentence of Article 91 of the Constitution.

On the basis of Para 8 of Section 24 (1) of Immigration Law, a permanent residence permit had been issued not only to citizens of the Russian Federation but also to citizens of other states. However, the number of such citizens of other states is comparatively small. In view of the aims advanced by the legislator, this numerical difference should be recognised as an essential difference between the citizens of the Russian Federation and other foreigners. Moreover, in connection with the warfare launched by the Russian Federation in Ukraine, it is important to take into account both national and international practice, according to which restrictions related to the residence rights are not imposed on all foreigners but, mainly, on citizens of the Russian Federation.

4.5. At the court hearing, Vilnis Vītolīņš, the representative of the *Saeima*, requested the Constitutional Court to terminate legal proceedings in the case in the part regarding incompatibility of Section 5 of the law of 22 September 2022 "Amendments to Immigration Law", insofar Para 8 of Section 24 (1) of Immigration Law had been deleted by it, with superior legal provisions, as well as the compatibility of Para 58 of Transitional Provisions of Immigration Law with superior legal norms, insofar it applied to the requirements set for a person regarding sufficient financial means and continuous residing in Latvia.

The contested regulation had never been constructed in a way to allow the Applicants to obtain only the status of a long-term resident of the European Union because the possibility to receive any other residence permit, envisaged in law, is not excluded.

The criteria allowing a person to acquire a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law and for acquiring the permit on the basis of Section 23¹ (1) of Law on Foreigners had differed because Section 23¹ (1) of Law on Foreigners had included the requirement regarding

permanent residing in Latvia and, also, the group of the respective persons had been numerically smaller.

5. The summoned person – the Ministry of Justice – holds that the contested regulation complies with Article 1, the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the Convention.

The Ministry of Justice underscores that the Second Amendments, which added several legal provisions to Transitional Provisions, are aimed at ensuring more proportionate transition to the new regulation and, thus, would give the possibility to everyone to receive the status of a long-term resident of the European Union if the person wishes so and meets the requirements set for obtaining this status.

In assessing the requirement to pass the examination in the proficiency of the official language, the Ministry of Justice points out that one of the instances where a person is allowed not to take this examination is when a person has reached the age of 75. This age threshold has been set in connection with the existing experience, accumulated in examining persons over the age of 75.

All members of Latvian society need the skill to use the official language freely to participate effectively in the democratic processes of the state.

As regards compliance of the contested regulation with the first sentence of Article 91 of the Constitution, the Ministry of Justice subscribes to the reasoning stated in the *Saeima's* written reply that, in the context of the provisions referred to in the applications, citizens of the Russian Federation are not in similar and comparable circumstances with other foreigners.

The principle of protecting legitimate expectations, in turn, in the present case is said to be linked to a person's right to inviolability of private life. Annulment of a permanent residence permit and subsequent expulsion from the state infringe upon the right to inviolability of private life, guaranteed in Article 96 of the Constitution. However, the setting of requirements regarding foreigners' entry and residing in Latvia is said to be a legal policy matter. A foreigner does not have the right to expect that such requirements could not be changed over time, depending on changes in the actual situation. The Applicants have been given a sufficiently long period of time and a real possibility to obtain the status of a long-term resident of the European Union and the respective residence permit, by meeting the requirements included in the provisions, referred to in the applications. However, it is up to each person whether they will use this opportunity.

The restriction on fundamental rights, envisaged in the contested regulation, is said to be established by a law, adopted in due procedure, and is sufficiently clearly worded, allowing a person to understand the content of the rights and obligations following from it and to foresee the consequences of application thereof. The contested regulation is aimed at reinforcing the constitutional significance of the official language, as well as to decrease preventively the risks to national security related to the warfare that the Russian Federation has launched in Ukraine. The restriction on fundamental rights has legitimate aims – protection of the democratic state order, of public security, and of other persons’ rights. The chosen measures are said to be suitable for reaching the legitimate aims of the restriction on fundamental rights because they will strengthen the official language and every citizen of the Russian Federation who submits the necessary documents for obtaining the status of a long-term resident of the European Union will undergo in-depth screening. This aspect is said to be of special importance in the current geopolitical circumstances. Allegedly, there are no other measures, restricting a person’s fundamental rights to a lesser extent, which would allow reaching the legitimate aims as effectively and efficiently. The Ministry of Justice subscribes to the considerations regarding the proportionality review, made in the *Saeima’s* written reply.

The Ministry of Justice does not uphold the Applicants’ opinion that application of the contested regulation would mean collective expulsion of foreigners, which is prohibited by Article 4 of Protocol 4 to the Convention. The contested regulation is not aimed at expelling from Latvia all those citizens of the Russian Federation who had a valid permanent residence permit, issued on the basis of Para 8 of Section 24 (1) of Immigration Law. I.e., it does not follow from the contested regulation that, after a certain date, such persons would be expelled from Latvia without individual assessment. The contested regulation ensures to every citizen of the Russian Federation, residing permanently in Latvia, the possibility to obtain, after meeting certain requirements, the status of a long-term resident of the European Union. Moreover, the provisions referred to in the applications do not regulate matters related to the expulsion of foreigners. These are regulated by Chapter V of Immigration Law, which comprises the conditions for expelling a foreigner, as well as provides for exceptions when the decision on return or the removal order is not adopted. Thus, each case is individually assessed in the respective procedure. Moreover, before issuing the decision on return or removal order, the Office has the obligation to review and verify whether such

expulsion is not contrary to Latvia's international commitments in the area of human rights.

Anda Smiltēna, the representative of the Ministry of Justice, stated at the court hearing that, in assessing the legitimate aim and proportionality of the restriction on fundamental rights, the Third Amendments should be taken into consideration.

6. The summoned person – the Ministry of the Interior – upholds the legal reasoning, provided in the *Saeima's* written reply, regarding compliance of the contested regulation with Article 1, the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the Convention.

The Ministry of the Interior underscores that Latvia has the sovereign right to manage and control its borders, as well as to define persons' rights to enter the state and reside in it. Likewise, in line with international law, a state has the right to target certain measures against another state, which violates its obligations towards the entire international community. The legislator is obliged to follow the current situation, as well as amend the legal provisions, adopted before, *inter alia*, by setting stricter requirements for acquiring certain rights.

It is contended that a foreigner does not have the right to expect that the conditions on entering and residing in Latvia could not be amended when the actual situation changes. The contested regulation had been adopted to reinforce national security and facilitate putting an end to international crimes and violations of human rights in connection with the war that the Russian Federation is waging in Ukraine. The information policy of the Russian Federation has long-term aims and it is oriented also towards changing the public opinion in Latvia in accordance with Russia's foreign policy priorities. The Russian Federation is trying to decrease the unity of Latvian society and achieve alienation of Latvia's inhabitants from the State of Latvia. Due to propaganda of the Russian Federation, which for years had been directly accessible to the part of society consuming information provided in the Russian language, a distorted perception of the world, incompatible with the reality, had taken root in this part of society. A person who knows the official language has the possibility to compare and assess critically all received information, as well as participate, in good quality, in the public discourse, which is an integral part of a democratic public life. However, a considerable part of Latvia's nationals do not have sufficient proficiency in the Latvian language needed for full inclusion in public life. The currently existing separation between

the Latvian and Russian language information spaces does not promote societal cohesion and protection of a democratic state order.

The legislator has set a sufficiently long period of time, allowing Citizens of the Russian Federation, residing permanently in Latvia, to reorient themselves in accordance with the order set out in the new legal regulation.

Both the temporary residence permit and the permanent residence permit, as well as the permanent residence permit of a citizen of a European Union, primarily, attest of the foreigner's right to reside in Latvia. However, the scope of rights, guaranteed in Latvia to a foreigner, to whom a permanent residence permit has been issued or who has been granted the status of a long-term resident of the European Union, differs from the scope of rights, granted to a foreigner to whom temporary residence permit has been granted.

Dace Radzēviča, the representative of the Ministry of the Interior, noted at the court hearing that, since the adoption of the Third Amendments, the requirement, set for persons wishing to reside in Latvia, regarding sufficient financial means and the requirements regarding continuous residing in the Republic of Latvia, could be equalled to the requirements that had been set already before the contested regulation entered into effect.

The persons, who have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law, and persons, who have acquired the permit on the basis of Section 23¹ (1) of Law on Foreigners, are not comparable. I.e., in difference to Para 8 of Section 24 (1) of Immigration Law, in the case of Section 23¹ (1) of Law on Foreigners, the decisive factor is how long the persons has been residing permanently in Latvia. Likewise, the number of persons belonging to both groups differs considerably.

7. The summoned person – the Ombudsman – holds that the legislator has not found the best solution for ensuring the constitutionality of the provisions referred to in the applications.

The Second Amendments had created a more lenient mechanism of transition for implementing Para 58 of Transitional Provisions of Immigration Law. However, the Ombudsman underscores that, at the time when the contested regulation was adopted, the impact of Regulation No. 157 on implementation of the contested regulation had not been discussed and assessed, i.e., it had not been considered whether the requirements, included in this Regulation, regarding examination of the proficiency in the official language were not excessively

burdensome for older persons. Moreover, the fact that the examination of the proficiency in the official language is envisaged in information system could cause problems to persons over the age of 65 with a low level of digital literacy. Thus, the Ombudsman is critical of the way in which the principle of good legislation had been complied with in the process of adopting the contested regulation.

Assessing the compliance of the contested regulation with the principle of legitimate expectations, the Ombudsman states: this principle does not exclude amending of the rights, once acquired by an individual, in a lawful way. Those citizens and non-citizens of Latvia who have chosen to obtain the citizenship of the Russian Federation have developed legitimate expectations that they would be able to retain the received permanent residence permit without meeting any other additional requirements. However, the State has the right, responding to threats and possible risks, to change the conditions for foreigners' entering and residence, and it is relevant for Latvia in the current geopolitical circumstances. The requirement regarding the proficiency in the official language is said to be proportionate, in particular, taking into account the close connection with Latvia of the respective persons and the fact that only the proof of proficiency in the official language in A2 degree is required. Likewise, the State had the right to amend the existing legal regulation to verify whether citizens of the Russian Federation whose country of citizenship has launched military aggression against neighbouring state Ukraine do not pose threats to the national security and public order of Latvia, as well as to set the requirement to them to prove a certain degree of their proficiency in the official language. However, in establishing such a requirement, the different abilities of various individuals should be taken into consideration, therefore the Ombudsman had already requested lowering the age threshold, upon reaching of which a person should be exempt from the examination in the proficiency in the state language, from 75 years of age to 65 years.

Assessing the alleged incompatibility of the contested regulation with Article 96 of the Constitution, the Ombudsman notes that the expulsion of foreigners who are residing permanently in the state is interference into their right to inviolability of private life. Annulment of a residence permit, issued to a foreigner, might leave adverse impact on the possibility to maintain the family ties. However, such restriction on fundamental rights is said to be suitable for reaching the legitimate aim – protection of the democratic state order and public security,

as it allows the State to ascertain whether citizens of the Russian Federation do not pose a threat to the national security of Latvia and may continue residing in Latvia.

The Ombudsman holds that the contested regulation, if it affects citizens of the Russian Federation whose family members live in Latvia, complies with Article 96 of the Constitution, because, in this case, a person may receive a temporary residence permit if the person has applied in due time and it has not been found that the respective person poses a threat to the national security and public order. As regards those citizens of the Russian Federation whose family members do not reside in Latvia, a mechanism of legal protection has been envisaged for eliminating an infringement on the rights to private life – when adopting the decision on removal, the Office and the State Border Guard have the obligation to examine the impact of this decision on the rights, included in Article 96 of the Constitution.

It is maintained that the contested regulation does not create the risk of collective expulsion, i.e., it does not revoke the procedure for adopting and appealing against the decision on return and the removal order. The individual circumstances of the particular foreigner must be assessed before adopting the said order and decision.

Assessing the alleged incompatibility of the contested regulation with Article 91 of the Constitution, the Ombudsman notes that this regulation envisages differential treatment not only depending on the state, the citizenship of which former citizens and non-citizens of Latvia have obtained, but also depending upon the law, on the basis of which a temporary residence permit had been granted to former citizens and non-citizens of Latvia after they had accepted the citizenship of the Russian Federation. I.e., the provisions, referred to in the applications, do not apply to those foreigners who, after having obtained the citizenship of the Russian Federation, received a temporary residence permit on the basis of the Law on Foreigners.

If the State's aim is to control whether citizens of the Russian Federation do not pose threats to the democratic state order and national security, the State could do it, by applying the Cabinet Regulation, which includes the list of those countries, the citizens of which, prior to receiving a visa or a residence permit, undergo additional screening. The Russian Federation has been included among these countries. Hence, the State of Latvia, prior to issuing a residence permit to citizens of the Russian Federation, may assess the possible threat to the national security and public order, connected to them. If the legitimate aim of differential

treatment is protection of other persons' rights then, even admitting that reinforcing the use of the official language is very important, the State, however, may not, in order to reach this aim, differentiate between persons according to their nationality because every foreigner should be integrated in society.

At the court hearing, Santa Tivaneškova, the Ombudsman's representative, noted that, after the contested regulation had entered into effect, the Ombudsman had received letters from inhabitants, drawing his attention to the fact that the contested regulation violated their fundamental rights.

8. The summoned person – the Office of Citizenship and Migration Affairs – holds that the contested regulation complies with Article 1, the first sentence of Article 91, Article 96 of the Constitution, as well as Article 4 of Protocol 4 to the Convention.

Allegedly, Para 58 of Transitional Provisions of Immigration Law, which had been in effect from 24 September 2022 until 19 April 2023, had not restricted the fundamental rights of any citizen of the Russian Federation because, during the aforementioned period, the beginning of the term as of which this provision had to be applied, i.e., 1 September 2023, had not set in yet.

The Second Amendments ensure to citizens of the Russian Federation, residing in Latvia, proportionate and reasonable transition to the new regulation. Citizens of the Russian Federation are given time for arranging the necessary documents; moreover, the possibility to take the examination in the proficiency in the official language twice has been granted. Likewise, as the result of these Amendments, the possibility to obtain the status of a long-term resident of the European Union has been made easier to those foreigners who are receiving the pension of the Russian Federation.

Although the Applicants point out that such obstacles as age and the status of health could make it difficult for persons to pass the examination of the proficiency in the official language, the said requirement is not disproportionate because Regulation No. 157 envisages instances when persons who, for objective reasons, are unable to pass the examination of the proficiency in the official language, can be exempt from this examination.

The State has the discretion to set out preconditions for receiving a residence permit, and the State does not have the obligation to ensure to a foreigner a residence permit of a certain type. Immigration policy is said to be subordinated to the national domestic interests. The State has fulfilled its positive obligation to

ensure to a foreigner accessible procedure so that they could resolve the matters related to their further residence and status in Latvia. I.e., citizens of the Russian Federation, residing in Latvia, have the right to apply for the status of a long-term resident of the European Union or a temporary residence permit due to family reunion, provided for in Immigration Law. Thus, losing the permanent residence permit does not mean that a foreigner no longer will be able to reside in Latvia.

The contested regulation had been introduced to decrease the threats to the Latvian national security and public order, which had arisen in connection with the war, launched by the Russian Federation against Ukraine, and this is the reason why the contested regulation applies to citizens of the aggressor state. However, they still may continue residing in Latvia, by proving that they have, at least on the minimum level, proficiency in the official language, which is the basis for integration. It is important to take into account that, with circumstances changing, the legislator has the grounds for responding accordingly and determining the legal regulation necessary for resolving the problems that have been identified.

Para 58 of Transitional Provisions of Immigration Law does not define the procedure for expelling foreigners. It is regulated by other legal provisions that stipulate that the decision on return or removal order is adopted individually with respect to each foreigner. Thus, the contested regulation does not envisage collective expulsion of foreigners.

At the court hearing, Arvīds Zahars, the Office's representative, noted additionally that, by the Third Amendments, the *Saeima* has completely eliminated the problems related to the requirements regarding continuous residing in Latvia and sufficient financial resources.

The criteria, according to which a person could acquire a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law and Section 23¹ (1) of the Law on Foreigners had differed. For instance, Section 3¹ (1) of the Law on Foreigners had not pertained only to the former citizens or non-citizens of Latvia.

9. The summoned person – the National Centre for Education – underscores that mastering of the official language is a process, which is impacted by various factors, therefore a single answer cannot be provided to the question how much time a person needs to master the Latvian language in A2 degree.

The process of mastering a language is said to be directly linked to the existential competence, i.e., the totality of an individual's personal traits and

attitudes. Successful mastering of a language also depends upon the intensity of studies, the methods used in studies, the suitability of the study content to the person's needs and interests, as well as the linguistic environment and the possibilities of using the foreign language in it.

A person, who has acquired a language in A2 degree, is able to understand separate sentences and frequently used phrases on daily matters; is able to communicate with others when simple exchange of information on well-known issues takes place; is able to provide information about oneself, direct vicinity, express one's needs, formulate short questions.

Most often, 240-300 hours are scheduled for mastering the Latvian level in A2 degree if the person has no preliminary knowledge, i.e., if the language has not been mastered on the basic 1st level (A1). If preliminary knowledge has been acquired then, most often, the number of hours scheduled for acquiring the language in A2 degree is 120-150.

At the examination of the proficiency in the official language, the exercises in listening and reading skills are completed online on a computer within examination information system, the tasks in writing skills – with a pen on paper, whereas the speaking skills can be tested in two ways – either on-site or in the form of a video conference. The tasks in listening and reading skills, to be completed online, have been created in a way that a person would not have to use the keyboard of the computer in Latvian but would only have to work with the computer mouse. The Centre, being aware that the particular target audience – citizens of the Russian Federation, *inter alia*, older persons, might encounter problems in completing the Latvian language tasks on a computer, has provided additional information on where and how a person can try out completing the Latvian language tasks online. Moreover, citizens of the Russian Federation and other interested parties have known about how the examination would take place in due time. Likewise, the analysis of the examination results has led to the conclusion that the way in which tasks are completed is not the decisive factor for passing the exam successfully because, most often, failure in the exam is due to insufficient writing skills.

Since the Centre had been able to ensure the possibility to take the examination to approximately 18 000 citizens of the Russian Federation already until 31 July 2023, following amendments to Regulation No. 157, the situation related to the Centre's capacity has not changed and it is able to ensure the examination to the aforementioned target group until 30 November 2023.

At the court hearing, the Centre's representatives Daiga Dambīte and Anta Lazareva additionally noted that the Centre had fulfilled the task set by the legislator – to ensure that examinations of the proficiency in the official language are held. It was also stated at the court hearing: if, during the examination, it is found that a person needs technical support, such support is provided. The selected age threshold of 75 years for taking the examination of the proficiency in the official language had been assessed in adopting Regulation No. 157 and it is based on research.

10. The summoned person – the State Language Centre – upholds the legal substantiation set out in the *Saeima's* written reply and is of the opinion that the contested regulation is compatible with Article 1, the first sentence of Article 91 and Article 96 of the Constitution, as well as Article 4 of Protocol 4 to the Convention.

Mastering of the official language on a certain level is individual by nature, i.e., the person's motivation to master the language is of decisive importance. Hence, the period of time, set by the legislator, within which a person has to provide certification of their knowledge of the official language in A2 degree is said to be sufficient and, allegedly, even persons without preliminary knowledge can meet the said requirement.

In general, the type of test and examination chosen is appropriate and suitable and it cannot be deemed to be an obstacle for successfully passing the examination.

Madara Rēķe, the representative of the State Language Centre, noted at the court hearing that proficiency in the official language was one of the indicators proving a person's link to a specific country, affiliation with it or the wish to be affiliated with it.

11. The summoned person – Latvia's representative before international human rights organisations (hereafter – the Representative) – holds that the contested regulation is compatible with Article 8, Article 14 of the Convention, as well as Article 4 of Protocol 4.

In the Representative's opinion, in the present case, the principle of legitimate expectations should be taken into account as one of the criteria characterising the proportionality of a restriction on private life.

Latvia's international commitments in the area of human rights do not prohibit it from amending the normative regulation on immigration to determine the procedure, in which foreigners enter the country and receive a residence permit, as well as from setting the conditions for expelling foreigners. Likewise, the said international commitments do not envisage foreigners' rights to apply for a specific type of residence permit. Article 8 of the Convention, which protects persons' right to inviolability of private life, applies to applications related to issuing a residence permit and the change of status that follows from this permit.

The Second Amendments are said to be very important in assessing the quality of the contested regulation as they, actually, respond to the anxiety expressed in the Applicants' applications. There are no grounds for doubting that the legitimate aims of the restriction on fundamental rights are protection of the democratic state order, public security and other persons' rights. The measures chosen by the legislator are said to be suitable for reaching these aims since they would allow to conduct in-depth screening with respect to every citizens of the Russian Federation who wishes to obtain the status of a long-term resident of the European Union, to ascertain whether the respective person is proficient in the official language, as well as would stimulate the persons' willingness to become naturalised and obtain the Latvian citizenship. The Representative holds that the alternative solutions would not help to reach the legitimate aims because it is exactly the new procedure that would allow to conduct detailed and individualised assessment of each foreigner wishing to reside in Latvia.

The required level of proficiency in the official language, defined by the legislator, is said to be proportionate, being one of the lowest levels of proficiency in the official language, envisaged in law. Moreover, the requirements regarding mastering of the official language at least on the specified level applies to a group of such persons who have already resided in Latvia permanently and continuously.

Taking into account the Second Amendments, the contested regulation, *prima facie*, does not cause concern regarding violation of the prohibition on collective expulsion of foreigners because individualised procedure of assessment would be available to the Applicants. Moreover, information available in the public space does not point to such targeted and institutionally coordinated national policy that would be aimed at mass detention and expulsion of a certain group of foreigners.

Prima facie, objective and reasonable grounds can be discerned for the differential treatment of the Applicants, in view of the aims defined by the

legislator and the fact that, in the current situation, citizenship of the Russian Federation is to be regarded as one of the risk factors. Moreover, the contested regulation provides for a more favourable treatment of the Applicants compared to other citizens of the Russian Federation who would want to receive a new permanent residence permit in Latvia or the status of a long-term resident of the European Union.

At the court hearing, Elīna Luīze, Latvia's representative before international human rights organisations, noted additionally that the legal provisions that had been valid before the contested regulation, which had provided for the possibility of state institutions to assess whether the foreigner would not pose a threat to national security, had not allowed reaching the legitimate aims of the restriction on fundamental rights in the same quality as the contested regulation. I.e., the contested regulation introduces systemic changes to defining the procedure for issuing residence permits.

12. The summoned person – association “Baltic Human Rights Society” (hereafter – the Society) – states that, *prima facie*, the contested regulation might be compatible with the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the Convention.

States do not have the obligation to provide equally “welcoming” treatment to citizens of all other states. In choosing the conditions, in accordance with which citizens of other states may reside therein, the State enjoys broad discretion.

Since the contested regulation, substantially, is aimed at preserving peace within the country, at the same time reinforcing the importance of the official language, the Society holds that the protection of a democratic state order and public security, as well as other persons' rights should be regarded as the legitimate aims of the restriction on fundamental rights, included in the contested regulation.

It is possible to reach the legitimate aims by the restriction on fundamental rights, included in the contested regulation, – the importance of the official language is being reinforced, and persons are encouraged to improve their proficiency in the official language, by improving it in courses or in other ways.

It should be taken into account that the *Saeima* has recognised the Russian Federation as a state sponsor of terrorism and the persons who are affected by the contested regulation are citizens of a state sponsor of terrorism. The concept of “citizenship” can be understood not only as a person's legal connection to the particular state but also as a person feeling affiliated with this state and its values.

Thus, in verifying whether the values, which are supported by citizens of the Russian Federation, which, moreover, have become such upon their own choice, are closer to the values of the terrorist state or those of Latvia, the legitimate aims could be reached. However, the issue whether an examination of the proficiency in the Latvian language should be identified with the verification of the respective values needs to be analysed.

Although the contested regulation does not mean automatic expulsion of the Applicants from the state, it follows from the applications that persons are the most concerned about this possibility. The Society is of the opinion that the Applicants could be expelled from the country on the basis of suspicion that they pose a threat to the national security. This suspicion is said to be connected to citizenship of the Russian Federation. However, the reasons why persons have chosen citizenship of the Russian Federation could be most diverse.

Hence, unless the involvement of each particular person in an offence that threatens the public security has been assessed, the suspicion of threat could be incompatible with the Convention. The warfare, launched by the Russian Federation in Ukraine, and other activities that directly or less directly jeopardise the democratic values of entire Europe should be taken into consideration. However, these circumstances cannot be used as a general justification for any activities targeting citizens of the Russian Federation.

The obligation, included in the contested regulation, requiring citizens of the Russian Federation, residing in Latvia, to pass the examination of the proficiency in the official language *per se* cannot be deemed to be collective expulsion, insofar the procedure for issuing a long-term residence permit is individualised and the possibility to appeal against the said decision is provided. It should be taken into account that exemptions have been envisaged regarding taking the examination of the proficiency in the official language, which point to individualised approach, and persons are not expelled from the country without individual assessment of each case.

Finally, assessing the compatibility of the contested regulation with Article 91 of the Constitution, the Society points out that citizens of the Russian Federation are not in similar and comparable circumstances with the citizens of other states. Other states, even those that cannot be regarded as being particularly friendly towards Latvia, currently are not engaged in warfare close to Latvia's borders, have not constantly made particularly hostile statements with respect to

Latvia, and have not previously advanced territorial claims with respect to the territory of Latvia.

At the court hearing, Lolita Buka, the Society's representative, pointed out that, possibly, the principle of good legislation had not been complied with in the course of adopting the contested regulation because the annotation to draft law, for instance, does not examine in-depth issues that might impact a person's fundamental rights, likewise, in-depth analysis of the capacity of institutions is lacking.

13. The summoned person – *Mg. iur. Aleksejs Dimitrovs* – holds that the provisions, referred to in the applications, are incompatible with Article 1, Article 91 and Article 96 of the Constitution.

The totality of social ties, existing between migrants, residing continuously in the state, and the society they live in, is said to be part of the concept of private life. It should be assessed whether the possibility to apply for the status of a long-term resident of the European Union excludes interference into a person's private life. Article 8 of the Convention does not guarantee the right to a certain type of residence permit. If the national legal acts provide for various types of residence permits then the court should analyse the legal and practical consequences of issuing the specific permit. If the issued permit gives its holder the possibility to reside on the territory of the hosting state and enjoy freely therein the right to inviolability of private and family life, then, in principle, the issuing of this permit is a sufficient measure for meeting the requirements set in Article 8 of the Convention.

The legitimate aim of the restriction on fundamental rights, included in the contested regulation, i.e., protection of public security, cannot be reached by verifying whether a person has regular and stable monthly income and whether they, during last five years, have resided permanently in Latvia. Thus, with respect to many persons who are affected by the contested regulation, the legitimate aim of the restriction on fundamental rights is not reached. Moreover, a mechanism for eliminating security risks has already been built into Immigration Law. I.e., if competent national authorities have the grounds to consider that the foreigner poses threats to the national security or public order, a decision is made to include the respective person in the list of those foreigners who are prohibited from entering into Latvia. Hence, the legitimate aim of the restriction on fundamental

rights, included in the contested regulation, can be reached by measures that restrict a person's rights to a lesser extent.

Likewise, there are doubts whether, in the context of the examination of the proficiency in the official language, the legitimate aims of the restriction on fundamental rights could be reached by the contested regulation.

Firstly, the certification of proficiency in the official language confirms the proficiency in the official language but *per se* does not confirm that the official language is used. Secondly, it is not clear why the obligation to prove the proficiency in the official language has been attributed only to citizens of the Russian Federation because also other foreigners who previously have been citizen or non-citizens of Latvia could thus expand the use of the official language.

Even if the measure chosen by the legislator were suitable for reaching the legitimate aims there are measures that are less restrictive upon a person's fundamental rights, i.e., the right or even an obligation to attend classes in the official language could be envisaged for a foreigner who had received a permanent residence permit. Thus, it is contended that the contested regulation is incompatible with Article 96 of the Constitution.

In assessing the alleged incompatibility of the contested regulation with Article 91 of the Constitution, it should be taken into account that differential treatment of citizens of the Russian Federation is admissible only if there are objective and reasonable grounds for such treatment. In the particular case, such objective and reasonable grounds cannot be identified because the legislator could have reached the legitimate aim of the differential treatment by more lenient means. For instance, it is not prohibited to ascertain individually whether the respective citizens of the Russian Federation support the aggression perpetrated by the Russian Federation or pose a threat to Latvia's national security. Hence, the contested regulation is said to be incompatible with Article 91 of the Constitution insofar it does not envisage individual assessment in the matter of annulling a permanent residence permit is, as the result of it, the rights, included in Article 96 of the Constitution, are violated.

In assessing the alleged incompatibility of the contested regulation with Article 1 of the Constitution, the following aspect should be highlighted: an individual could not have foreseen that retaining of the issued residence permit would be made dependent on the existence of regular and stable monthly income and continuous residing in Latvia during the last five years. A person cannot return to the past and change their previous behaviour. This is indicative of a violation of

the principle of legitimate expectations with respect to persons who cannot obtain a residence permit because of this reason. By imposing the obligation upon persons to master the official language they are not required to change their previous behaviour; however, the legislator, in adopting the contested regulation, has not ensured a reasonable transitional period. Instead of adopting the contested regulation, the legislator could have envisaged a foreigner's rights or even obligation to attend the official language classes; could have provided that the proficiency in the official language should be proven upon registering the permanent residence permit or could have annulled the permanent residence permit, providing, simultaneously: if a foreigner has not met the requirements regarding mastering the official language they have the right to continue residing in Latvia on the basis of a temporary residence permit.

At the court hearing, *Mg. iur.* Aleksejs Dimitrovs stated that the Third Amendments have mainly dealt with the issues related to the requirements regarding continued residing in the state and sufficient financial means.

The Findings

14. One of the contested provisions, i.e., Para 58 of Transitional Provisions of Immigration Law, has been amended following initiation of the case. Para 2 of Section 29 (2) of Constitutional Court Law provides that legal proceedings in a case may be terminated before the judgement has been delivered if the contested legal provision has become void. The *Saeima* also has requested termination of legal proceedings in the present case, substantiating it with Para 3 of Section 29 (1) of Constitutional Court Law, which provides that legal proceedings in a case may be terminated if the Constitutional Court establishes that the decision on initiating the case does not meet the requirements set out in Section 20 (5) of this law. Firstly, the *Saeima* points out that legal proceedings in the case should be terminated in the part regarding the compliance of Para 58 of Transitional Provisions of Immigration Law with superior legal provisions, insofar it applies to the requirements set for a person regarding sufficient financial means and continuous residing in Latvia. In this regard, Para 58 of Transitional Provisions of Immigration Law has not created any adverse consequences for any person because it cannot be established that any person could not meet these requirements and, even if that could be established, allegedly, there are effective general legal

remedies. Secondly, legal proceedings should be terminated in the part regarding the compliance of Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of Immigration Law had been deleted by it, with superior legal provisions. It is contended that this legal provision could not infringe upon the Applicants’ fundamental rights.

The Constitutional Court has recognised that matters of procedural nature regarding termination of legal proceedings usually should be examined before reviewing the constitutionality of legal provisions (*see Judgement by the Constitutional Court of 12 March 2020 in Case No. 2019-11-01, Para 9*). Hence, the Constitutional Court, first and foremost, will examine whether such circumstances exist due to which legal proceedings in the case should be terminated.

14.1. The concept of “contested provision”, in the meaning of Para 2 of Section 29 (1) of the Constitutional Court Law, should not be understood formally, solely as a text, included in the regulatory enactment. The contested regulation determines the legal order, which the Applicant considers as being incompatible with superior legal provisions. Therefore, in those cases where the contested regulation has been amended, the Constitutional Court has to verify whether the legal situation, caused by the contested regulation, has been changed substantially (*see, for example, Decision by the Constitutional Court of 11 March 2015 on Terminating Legal Provisions in Case No. 2014-33-01, Para 7*).

The case to be reviewed by the Constitutional Court was initiated with respect to compliance of Para 58 of Transitional Provisions of Immigration Law, in the wording that was in effect from 24 September 2022 until 19 April 2023, with superior legal provisions. The said provision stipulated that for a citizen of the Russian Federation, who had received a permanent residence permit in accordance with Para 8 of Section 24 (1) of this law, the permanent residence permit would be valid until 1 September 2023. Successively, this provision stipulated that if a person wished to receive repeatedly a residence permit they had to submit, by 1 September 2023, certification proving proficiency in the official language.

On 5 April 2023, the *Saeima* adopted the Second Amendments that entered into effect on 20 April 2023 and by which the contested Para 58 of Transitional Provisions was expressed in new wording. The Second Amendments were adopted and entered into effect before the term of validity defined for a residence permit – 1 September 2023, defined in the wording of Para 58 of Transitional Provisions that was in force until 24 September 2022, had set in.

Para 58 of Transitional Provisions of Immigration Law was expressed by the Second Amendments in new wording, creating the possibility to take the examination of the proficiency in the official language at least twice to all those who had expressed the wish to take it. Accordingly, the term of validity of a permanent residence permit was extended until 31 December 2023 or until the date when the final decision on granting the status of a long-term resident of the European Union enters into effect. If the Office has not received the documents that are needed for applying for the status of a long-term resident of the European Union by 1 September 2023 the permanent residence permit, issued to a person, is valid until 1 September 2023. Pursuant to the annotation to the draft law, the Second Amendments were necessary to ensure that a person who wished to continue residing in Latvia, would have the time for submitting the necessary documents to apply for the status of a long-term resident of the European Union and continue residing in Latvia while the application is being reviewed.

Following the Second Amendments, Immigration Law was amended one more time. However, the Third Amendments did not amend the contested Para 58 of Transitional Provisions of Immigration Law and it is still in effect in the wording, in which it was expressed by the Second Amendments. The Third Amendments do not change the fact that the permanent residence permits, issued to citizens of the Russian Federation in accordance with Para 8 of Section 24 (1) of Immigration Law, become invalid. The Third Amendments define two other legal grounds, on the basis of which a person may continue residing in Latvia if they have not met the requirements set for obtaining the status of a long-term resident of the European Union. Firstly, Para 58⁵ of Transitional Provisions of Immigration Law gives a person the right to apply for a new permanent residence permit, on the basis of Para 7 of Section 24 (1) of this law. Secondly, on the basis of Para 58⁶ of Transitional Provisions, a person has the right to request a permit to stay in Latvia. Whereas Para 58⁷ and Para 58⁸ of Transitional Provisions specify the content of the permit to stay in Latvia. Para 58⁹ of Transitional Provisions regulate the order, in which the new permanent residence permit or the permit to stay in Latvia must be requested, as well as the period, in which the Office reviews the application. Finally, Para 58¹⁰ of Transitional Provisions sets out the requirements for acquiring a new permanent residence permit or a permit to stay in Latvia, whereas the right to employment of a person, who wishes to acquire such permit, is defined in Para 58¹¹.

The Applicants link the restriction on their fundamental rights exactly with the fact that, pursuant to amendments to Immigration Law, the permanent residence permit, issued to them on the basis of Para 8 of Section 24 (1) of Immigration Law, becomes invalid. Namely, a person who wishes to continue residing in Latvia must acquire new legal grounds, by meeting the requirements, defined in legal provisions, for acquiring the particular residence permit. The legal effects – the residence permit, issued on the basis of Para 8 of Section 24 (1) of Immigration Law, becoming invalid – do not change also after the Second Amendments, by which Para 58 of Transitional Provisions of Immigration Law has been expressed in new wording. Moreover, contrary to the statement made by the *Saeima*, the aforementioned legal provision does not set out the requirements regarding sufficient financial means and continuous residing in Latvia that have to be met for a person to receive a new residence permit. These requirements have been established in other legal provisions. Thus, also the possible use of general legal remedies is related to other legal provisions.

In view of all the above, the Constitutional Court concludes: although the *Saeima* has amended Para 58 of Transitional Provisions of Immigration Law, the circumstances, to which the Applicants have linked the restriction on their fundamental rights, continue to exist. The considerations, included in the *Saeima*'s written replies and expressed by the participants in the case at the court hearing, as well as opinions by the summoned persons have been provided, taking into account also the Second Amendments. Hence, the Constitutional Court must review Para 58 of Transitional Provisions of Immigration Law in the wording that has been in effect since 20 April 2023.

In such circumstances, legal proceedings in the case in the part regarding Para 58 of Transitional Provisions of Immigration Law must not be terminated and the Constitutional Court must examine, whether Para 58 of Transitional Provisions of Immigration Law in the wording, which is in effect since 20 April 2023, complies with Article 1, the first sentence of Article 91, Article 96 of the Constitution, as well as Article 4 of Protocol 4 to the Convention.

14.2. Successively, the Constitutional Court will examine the request to terminate legal proceedings in the case in the part regarding compliance of Article 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of Immigration Law was deleted by it, with superior legal provisions.

The Applicants are citizens of the Russian Federation, who have been issued a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. This legal provision envisaged a simplified procedure for obtaining a permanent residence permit to those foreigners who, prior to obtaining the citizenship of another state, had been citizens or non-citizens of Latvia. For example, the requirements regarding mastering of the official language, included in Section 24 (5) of Immigration Law, did not apply to these persons. By Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, these grounds for obtaining the permanent residence permit were deleted from Immigration Law. However, it should be taken into account that the deletion of Para 8 of Section 24 (1) of Immigration Law from Immigration Law does not affect those persons who already have obtained a permanent residence permit on these legal grounds. For example, the permit is valid for other foreigners, who are not citizens of the Russian Federation but who have acquired a permanent residence permit on the aforementioned grounds. The fact that the permanent residence permit, issued to the Applicants, becomes invalid and that these persons, if they wish to continue residing in Latvia, have to acquire new legal grounds follows from Para 58 of Transitional Provisions of Immigration Law. Moreover, at the court hearing, the Applicants’ representatives pointed out that, in the present case, the fact that the issued residence permits become invalid, which is regulated by Para 58 of Transitional Provisions of Immigration Law, causes adverse legal effects for the Applicants.

It can be concluded from the above that Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of Immigration Law is deleted by it, cannot adversely affect the Applicants and infringe upon their fundamental rights because a permanent residence permit, issued to citizens of the Russian Federation, becomes invalid in accordance with another legal provision. Hence, pursuant to Para 6 of Section 29 (1) of Constitutional Court Law, legal proceedings in the case in this part cannot be continued.

Hence, legal proceedings regarding the compliance of Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of Immigration Law is deleted by it, with Article 1, the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the Convention shall be terminated on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law.

15. The Applicants point out that Para 58 of Transitional Provisions of Immigration Law, in the wording that has been in effect since 20 April 2023 (hereafter – the contested provision), violates the principle of legitimate expectations, included in Article 1 of the Constitution, the principle of legal equality, included in the first sentence of Article 91 of the Constitution, and is incompatible with Article 96 of the Constitution, which includes the right to inviolability of private life. Moreover, allegedly, the contested provision violates the prohibition of collective expulsion of foreigners, enshrined in Article 4 of Protocol 4 to the Convention.

The Applicants' considerations regarding the incompatibility of the contested provision with Article 96 of the Constitution are, basically, linked to the permanent residence permit becoming invalid and, possibly, expulsion from the state if the person fails to meet the requirements, included in the contested provision. Thus, the Applicants' arguments regarding the alleged incompatibility of the contested provision with Article 96 of the Constitution are closely related to the arguments pertaining to the principle of protecting legitimate expectations, included in Article 1 of the Constitution, as they are related to the issue of losing rights that already had been acquired. These arguments are linked to a person's legitimate expectations that they would be able to retain the permanent residence permit that already has been obtained, and that they would not be set new requirements in order not to lose the legal grounds to continue residing in Latvia. In view of the above, the Constitutional Court, in examining, whether the alleged restriction on fundamental rights, included in Article 96 of the Constitution, is justifiable, will also verify whether the principle of protecting legitimate expectations has been complied with. Since the basic matter in the case is losing the already granted right to permanent residence and its impact on a person's possibility to continue residing in Latvia, the Constitutional Court will examine this matter first and foremost. Successively, the Court will examine separately whether the contested provision complies with the principle of legal equality, enshrined in the first sentence of Article 91 of the Constitution, as well as will examine the Applicants' considerations regarding the compatibility of the contested provision with Article 4 of Protocol 4 to the Convention.

16. Article 96 of the Constitution provides: Everyone has the right to inviolability of his or her private life, home and correspondence.

The Constitutional Court has recognised: the right to inviolability of private life means that an individual has the right to protection of private premises, family against unfounded interference, as well as the right to live as one wishes to, to develop and improve one's personality in accordance with one's nature and wishes, the right to establish and develop relationships with other people and external world, the right to identify with a particular social group and form communication with other persons, suffering as minimal as possible interference by the State or other persons (*see Judgement by the Constitutional Court of 4 November 2021 in Case No. 2021-05-01, Para 10.1.*). A person, residing permanently in a particular state, develops social ties with other members of society, establishes a family, improves oneself and fulfils oneself in different areas. All the abovementioned characterises the way, in which a person exercises the right to private life. Hence, a legal provision that affects the possibility for a person to continue being part of society, in which they have resided permanently, and to maintain the already established social ties may restrict a person's right to inviolability of private life.

To clarify the content of fundamental human rights, included in the Constitution, Latvia's international commitments in the area of human rights must be taken into account (*see, for example, Judgement by the Constitutional Court of 8 June 2022 in Case No. 2021-40-0103, Para 7.2.*). The European Court of Human Rights has repeatedly recognised that a foreigner's right to enter or reside in particular state does not follow from Article 8 of the Convention, whereas the State has the right to control the entry, residence and expulsion of aliens (*see, for example, Judgement by the Grand Chamber of the European Court of Human Rights of 15 November 1996 in Case "Chahal v. the United Kingdom", Application No. 22414/93, Para 73*). Moreover, Article 8 of the Convention does not guarantee absolute right to a foreigner not to be expelled from the state even if this persons has resided in this state for a long period or even had been born there (*see Judgement by the Grand Chamber of the European Court of Human Rights of 18 October 2006 in Case "Üner v. The Netherlands", Application No. 46410/99, Para 55.*). However, if a person has resided in a country on the basis of a residence permit then the annulment of it and, accordingly, possible expulsion of a person from the state might restrict a person's right to inviolability of private life, included in Article 8 of the Convention (*see, for example, Judgement by the European Court of Human Rights of 26 April 2018 in Case "Hoti v. Croatia", Application No. 63311/14, Para 115*). Namely, although possible expulsion of a person from a

state does not restrict a person's right to inviolability of private life in all cases, special attention should be paid to those persons who have resided permanently in the particular state. Since Article 8 of the Convention protects also a person's right to establish relationships with other persons and society and sometimes may comprise aspects of an individual's social identity, the totality of social ties between persons who have resided permanently in the state and the society, in which these persons live, is part of the concept of "private life". Thus, expulsion of such persons is interference into their right to inviolability of private life (*see Judgement by the European Court of Human Rights of 24 March 2015 in Case "Kerkez v. Germany", Application No. 37074/13, Para 25*).

Hence, it can be concluded that the right to inviolability of private life, included in Article 96 of the Constitution, could be restricted if a legal provision envisages that the issued permanent residence permit becomes invalid and, accordingly, possible expulsion from the state and it applies to a person who has lived permanently in Latvia and established social ties here.

The Applicants are citizens of the Russian Federation who have resided permanently on the territory of Latvia on the basis of a permanent residence permit issued to them. The contested provision defines the time until which the issued permanent residence permit is valid and, essentially, points out that after this moment the issued permit becomes invalid.

To acquire new legal grounds that would allow a person to continue residing in Latvia, they have to meet the respective requirements. To obtain the status of a long-term resident of the European Union, in accordance with Section 3 (1) of "Law on the Status of a Long-term Resident of the European Union in the Republic of Latvia", a person must pass the examination of the proficiency in the official language, as well as meet the requirements related to sufficient financial means and continuous residence in Latvia. Likewise, a person has the possibility to continue residing in Latvia if they obtain a new permanent residence permit, in accordance with Para 58⁵ of Transitional Provisions of Immigration Law, a permit to stay in Latvia, in accordance with Para 58⁶ of these Transitional Provisions, or any other residence permit, as long as the requirements set for obtaining these permits are met.

Although the contested provision does not regulate a person's expulsion from the state, nevertheless, for a person who does not obtain new legal grounds, on the basis of which they could continue residing in Latvia, expulsion could be one of the possible consequences in a situation like this. Hence, the contested

provision and the permanent residence permit becoming invalid, which follows from it, affects a person's already acquired rights and all their social ties with society, in which this person has lived permanently.

Thus, the contested provision restricts the Applicants' right to inviolability of private life, included in Article 96 of the Constitution.

17. In examining the constitutionality of a restriction on fundamental rights, first of all, it must be verified whether the restriction has been established by a legal provision, adopted in due procedure. A restriction on fundamental rights must be established in such legislative procedure that complies with the principle of good legislation process (*see Judgement by the Constitutional Court of 29 September 2022 in Case No. 2022-08-01, Para 13*).

The Constitutional Court has stated previously that, in the present case, it will not review whether Para 58 of Transitional Provisions of Immigration Law in the wording, which was in effect from 24 September 2022 until 19 April 2023, complies with superior legal provisions. Therefore, in verifying whether the restriction on fundamental rights has been established by a legal provision, adopted in due procedure, the Constitutional Court will review only considerations linked to Para 58 of Transitional Provisions of Immigration Law in the wording, which has been in effect since 20 April 2023.

17.1. Para 58 of Transitional Provisions of Immigration Law in the wording that is currently in effect was adopted on 5 April 2023 by the law "Amendments to Immigration Law", which was promulgated on 6 April 2023 in the official journal "Latvijas Vēstnesis" No. 69A and entered into effect on 20 April 2023.

The Constitutional Court does not doubt that the contested provision has been adopted and promulgated in the procedure defined in the Constitution and the Rules of Procedure of the *Saeima* and also is accessible in accordance with statutory requirements.

17.2. The Applicants point out that the contested provision is still not clear because it prohibits the Applicants from understanding their rights and obligations. The requirements for obtaining the status of a long-term resident of the European Union are included also in Transitional Provisions of Immigration Law, not only in "Law on the Status of a Long-term Resident of the European Union in the Republic of Latvia", which regulates the granting of this status.

If a matter has been regulated in several regulatory enactments and the contested provision is understandable in conjunction with other provisions, it is

not the grounds for considering that the content of the contested provision would be too unclear (*see Judgement by the Constitutional Court of 21 April 2016 in Case No. 2015-21-01, Para 15*). Thus, the fact that the acquisition of the status of a long-term resident of the European Union is regulated both by the contested provision and by other provisions of Immigration Law, as well as “Law on the Status of a Long-term resident of the European Union in the Republic of Latvia” does not prove that the contested provision would not be clear.

The contested provision has been worded sufficiently clearly, allowing a person to understand the content of the rights and obligations derived from it and to foresee the consequences of application thereof.

17.3. The Applicants doubt whether the contested provision has been adopted in compliance with the principle of good legislation process. No assessment has been made of whether the capacity of institutions will allow implementing everything that has been set out in the contested provision. Likewise, the contested provision had been adopted in urgent procedure and the entire legislative process had taken only five working days. Moreover, the legislator had amended the legal regulation frequently and the Applicants could not prepare and take the necessary actions for obtaining a new residence permit. Finally, in adopting the contested provision, the legislator had not examined its compliance with superior legal provisions – the Constitution and the Convention.

The Applicants’ considerations regarding the capacity of institutions are not related to the contested provision in its valid wording and the Constitutional Court does not doubt that the legislator, in adopting the contested provision, has assessed the capacity of institutions and ascertained that they would be able to take all the respective measures.

The Constitutional Court has recognised that, pursuant to the principle of the *Saeima*’s autonomy, the legislator has discretion and it has the right to make expediency considerations regarding urgent review of a draft law (*see Judgement by the Constitutional Court of 7 December 2023 in Case No. 2022-20-01, Para 16.2.*). The decisive matter is whether legal provisions have been complied with in the process of legislation and whether the deputies could exercise their right to submit proposals for the draft law. The Constitutional Court finds that proposals were submitted both by individual Members of the *Saeima* and by factions, as well as by the Defence, Internal Affairs and Corruption Prevention Committee of the *Saeima*, as well as the Legal Bureau of the *Saeima*. The Applicants have not indicated other circumstances that would prove a violation of

the principle of good legislation process due to the reason that the draft law was examined in urgent procedure. Neither does the Constitutional Court find such circumstances.

Legal regulation should be sufficiently stable, allowing an individual, being guided by legal provisions, to adopt not only short-term decisions but also make long-term plans for one's future (*see Judgement by the Constitutional Court of 25 October 2004 in Case No. 2004-03-01, Para 9.2.*). Although amendments to legal regulation may affect legal stability, the legislator has the right to improve it to reach the envisaged aim. Whereas the matter of whether the period of time, defined in the contested provision, within which a person has to perform the stated obligations to obtain legal grounds for residing in Latvia, is appropriate should be examined in reviewing the proportionality of the restriction on fundamental rights.

It is not noted directly in the preparatory materials for the contested provision that, at the time of its adoption, special attention had been paid to the provisions of the Constitution and the Convention, referred to in the applications. However, it follows from the materials in the case in general and it was also confirmed by the *Saeima's* representative at the court hearing that the legislator had assessed the compliance of the contested provision with superior legal provisions.

Thus, the restriction on fundamental rights, included in the contested provision, has been established by a legal provision, adopted in due procedure.

18. Any restriction on fundamental rights should be based on circumstances and arguments regarding the necessity for it because a restriction is established for the sake of important interests – a legitimate aim.

It is noted in the *Saeima's* written reply that the legitimate aims of the restriction on fundamental rights are protecting the democratic state order, public security, and other persons' rights. I.e., the contested provision is aimed at preventively decreasing possible security risks linked to the warfare launched by the Russian Federation in Ukraine, as well as reinforcing the constitutional importance of the official language. The Applicants agree that the legitimate aim of the restriction on fundamental rights is to strengthen public security.

To establish whether a restriction on fundamental rights has a legitimate aim and what this aim is, it should be taken into account that the contested provision applies only to those citizens of the Russian Federation who have

acquired a residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. They are the ones who must comply with the requirements included in the legal provision and obtain new legal grounds to continue residing in Latvia.

18.1. The Constitutional Court has recognised that safeguarding of the national security is the basic obligation of the State (*see Judgement by the Constitutional Court of 23 April 2003 in Case No. 2002-20-0103, Para 2 of the Findings*). Pursuant to “National Security Concept 2023”, the existence of the State depends not only upon the State but also responsible attitude of all inhabitants of Latvia towards the State and its security. The obligation to safeguard national security is linked both to internal and external risks. In such circumstances, legal regulation in the area of immigration is one of the ways for decreasing security risks. The State enjoys certain discretion in this area (*see Judgement by the European Court of Human Rights of 12 January 2017 in Case “Abuhmaid v. Ukraine”, Application No. 31183/13, Para 120*). The State has discretion to assess various risks related to national security and, accordingly, also change its immigration policy to respond to such risks.

In assessing the restriction on a person’s fundamental rights, included in the legal provision, the geopolitical context must be taken into account (*compare, see Judgement by the Constitutional Court of 18 October 2023 in Case No. 2022-33-01, Para 16, and Decision by the European Court of Human Rights of 23 May 2023 in Case “Gaponenko v. Latvia”, Application No. 30237/18, Para 43*). If legal provisions, in view of the geopolitical context, have been adopted with the purpose of decreasing the risks for the independence of the State of Latvia and threats to a democratic state order then they have legitimate aims because they are directed at protecting both the democratic state order and public security.

It is explained in the annotation to the draft law that the contested provision had been adopted in view of the war in Ukraine launched by the Russian Federation and the related need to reinforce the national security of Latvia. For a long time already, the geopolitical situation in the Baltic Sea region has been affected by Russia’s defiant and aggressive military and hybrid activities (*see Notification by the Saeima of 24 September 2020 “On Approving the National Security Concept”*). Latvia’s national security is threatened by the operations of informative influence, actively deployed by Russia, in which also propaganda and disinformation are used (*see Public Report by the State Security Service on the Activities of the State Security Service in 2022 Available: vdd.gov.lv; see also*

Report on the Activities of the Constitution Protection Bureau in 2022. Available: sab.gov.lv).

In this regard, it should be taken into account that these persons, to whom the contested provision applies, have deliberately chosen to establish relationships of loyalty and solidarity with the Russian Federation, by becoming citizens of this state (*compare, see Judgement by the Constitutional Court of 30 November 2023 in Case No. 2022-36-01, Para 12.1.*). The risks that are linked to citizenship of the Russian Federation are taken into consideration also in other countries and on the European Union level. For example, the European Union has suspended the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to citizens of the European Union and the Russian Federation (*see Council Decision (EU) 2022/ 1500 of 9 September 2022 on the suspension in whole of the application of the Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation*).

Thus, it can be concluded that the legislator, in introducing changes to the area of immigration, has taken into consideration also the geopolitical context and the risks that can be posed by persons whose country of citizenship is the Russian Federation. Hence, the restriction on fundamental rights, included in the contested provision, is linked to decreasing security risks and is directed at protecting the democratic state order and public security.

18.2. Passing the examination of the proficiency in the official language is a requirement that citizens of the Russian Federation must meet in order to obtain the status of a long-term resident of the European Union or a new permanent residence permit.

The Latvian language is an integral part of the constitutional identity. The official language is the society's common language of communication and democratic participation. Moreover, Latvia is the only place in the world where the existence and development of the Latvian language and, thus, of the title nation can be guaranteed. The State has the obligation to develop and defend the only official language – the Latvian language. Narrowing the use of Latvian as the official language within the State's territory should be considered also as a threat to the democratic state order (*compare, see Judgement by the Constitutional Court of 21 December 2011 in Case No. 2001-04-0103, Para 3.2. of the Findings*). Thus, restriction on fundamental rights as the one included in the contested provision is

directed at strengthening the official language and protecting the democratic state order.

Such regulation is also aimed at protecting the rights of Latvia's inhabitants, *inter alia*, its nationals, to use the official language (*see Judgement by the Constitutional Court of 9 February 2023 in Case No. 2020-33-01, Para 30*). The contested provision applies to persons who have resided permanently in Latvia and prior to acquiring the citizenship of the Russian Federation had been citizens or non-citizens of Latvia. The restriction, included in the contested provision, is directed at ensuring that persons, who lead their daily lives in Latvia, create social ties, work, become involved in daily communication with other persons, would be able to use the Latvian language at least on the basic level and, thus, it protects other persons' rights to use the official language in communication.

The Constitutional Court concludes that the restriction on fundamental rights, included in the contested provision, as regards strengthening the official language, is aimed at protecting the democratic state order and other persons' rights.

Thus, the legitimate aims of the restriction on fundamental rights, included in the contested provision, are protection of the democratic state order, public security, and other persons' rights.

19. In verifying whether the restriction on fundamental rights is proportionate, the Constitutional Court ascertains, first and foremost, whether the restriction is suitable for reaching the legitimate aim, i.e., whether the legitimate aim can be reached by the chosen measures.

19.1. After the war, launched by Russia in Ukraine, turned into full-scale invasion in 2022, the *Saeima* and, later, also the European Parliament recognised Russia as a state sponsor of terrorism (*see Statement by the Saeima of 11 August 2022 "About targeted military attacks by the Russian Federation on Ukrainian civilians and public space" and European Parliament resolution of 23 November 2023 on recognising the Russian Federation as a state sponsor of terrorism (2022/2896(RSP))*). Available: europarl.europa.eu). As noted by the *Saeima* and the Ministry of Justice, in the process for obtaining a new status that would allow persons to continue residing in Latvia, every citizen of the Russian Federation who submits the documents required for applying for the status of a long-term resident of the European Union would undergo in-depth screening, and this status would not be granted to a person who poses threats to national security

and it is confirmed by the opinion provided by a competent security authority (*see Para 4 of Section 8 of “Law on the Status of a Long-term Resident of the European Union in the Republic of Latvia”*). Every person is individually re-screened also in the process of obtaining other residence permits. For example, for a person to obtain a permit to stay in Latvia or a new permanent residence permit pursuant to Para 58⁵ and Para 58⁶ of Transitional Provisions of Immigration Law, it is verified whether any of the conditions, referred to in Section 36 (1) of Immigration Law, has not set it. Hence, the contested provision ensures that citizens of the Russian Federation, i.e., of a state that has been recognised as a state sponsor of terrorism, may reside in the territory of Latvia only if they do not pose threats to the national security.

At the court hearing, the Applicants’ representatives repeatedly stated that a large part of the Applicants were women of retirement age and, thus, could not in any way pose threats to the national security. However, as stated above in this judgement, it should be taken into account that citizenship in all cases is a proof of a person’s loyalty to their country of citizenship, as well as creates rights for every citizen, irrespective of age or gender, and imposes obligations with respect to their country of citizenship. Thus, also the screening that the persons, wishing to obtain new legal grounds to continue residing in Latvia, are subject to is aimed at reinforcing the national security, thus protecting the democratic state order and public security.

19.2. In order to obtain new legal grounds, on the basis of which a person could continue residing in Latvia, e.g., the status of a long-term resident of the European Union or a new permanent residence permit, they, in accordance with Para 6 of Regulation No. 157, must pass the examination in the proficiency in the official language at least in A2 degree. The Centre has noted that a person, who has mastered a language in A2 degree, is able to understand separate sentences and frequently used phrases on relevant matters of daily life; is able to communicate in situations where simple exchange of information on known matters is taking place; is able to provide information, in simple words, about oneself, direct vicinity, express one’s needs, formulate short questions. Hence, the contested provision ensures that persons who wish to continue residing permanently in Latvia have at least such level of proficiency in the Latvian language that allows them to engage in public and private communication on simple matters. Thus, it is ensured that every member of Latvian society may use the official language in daily life and that a person does not have to use another language, instead of the

official language, in communication about daily topics. In this way, also other persons' right to turn to any member of society in the official language and, accordingly, also the democratic state order are protected.

Likewise, it should be taken into account that the analysis, conducted by the State Security Service, points to significant harm to society, inflicted by the information influence measures that the Russian Federation has directed for a long-time against Latvia (*see Public Report of the State Security Service on the Activities of the State Security Service in 2022. Available: vdd.gov.lv*). At least basic-level proficiency in the official language in general may make it easier for a person to receive information in the official language.

Thus, the restriction on fundamental rights, established by the contested provision, is suitable for reaching the legitimate aims – protection of the democratic state order, public security, and other persons' rights.

20. The restriction on fundamental rights, established by the contested provision, is necessary if there are no other measures that would be as effective and by choosing of which a person's fundamental rights would be restricted to a lesser extent. A more lenient measure is not any other measure but only such that allows reaching the legitimate aim in at least the same quality (*see, for example, Judgement by the Constitutional Court of 7 October 2010 in Case No. 2010-01-01, Para 14*).

The Applicants state that the legitimate aims of the restriction on fundamental rights could be reached by such measures that would be less restrictive upon a person's fundamental rights: 1) a longer period, during which the previously acquired permanent residence permit remains valid, as envisaged by the alternative, elaborated by the Cabinet; 2) individual annulment of the permanent residence permit and individual assessment of each particular case, verifying whether the particular person poses threats to national security; 3) introducing a mechanism of sanctions against some citizens of the Russian Federation. The *Saeima*, in turn, notes that the first and the second solution would not reach the legitimate aims of the restriction on fundamental rights in the same quality, whereas national and international sanctions, obviously, cannot be deemed to be a more lenient solution.

20.1. The draft law, elaborated by the Cabinet, provided that persons should submit certificate regarding proficiency in the official language simultaneously with submitting documents for registering the permanent residence permit but no

sooner than a year after the regulation, included in the draft law, had entered into effect.

The Constitutional Court, in verifying whether more lenient measures do not exist, must respect the State's broad discretion in creating the immigration policy. The legislator has linked the need for new legal grounds, on the basis of which a person could continue residing in the territory of Latvia, and that includes also passing the examination of the proficiency in the official language, to the protection of the democratic state order, public security, and other persons' rights. As explained above, the contested provisions were adopted in response to the war that Russian Federation had launched in Ukraine and as a measure for regulating the legal situation in Latvia as swiftly as possible. Likewise, one of the legislator's aims was to achieve that a certain part of society, i.e., citizens of the Russian Federation, to whom the contested provision applies, prove that they have at least basic-level proficiency in the official language and, if not having it, master it on this level as soon as possible. In such circumstances, a longer period set for meeting these new requirements would not reach the legitimate aims of the restriction on fundamental rights in the same quality.

20.2. With respect to the possible measure that would restrict an individual's fundamental rights to a lesser extent – individual assessment of each case from the perspective of threats to national security – the Constitutional Court concludes that the currently valid legal regulation provides exactly for detailed and individualised assessment of each citizen of the Russian Federation. As noted above in this judgement, in the process, in which a person will be able to obtain the status of a long-term resident of the European Union or other legal grounds for residing in Latvia, each citizens of the Russian Federation who expresses such wish will undergo in-dept screening and a residence permit will not be issued to a person who poses threats to national security. Since the legislator has linked the possible threat to national security with citizenship of the Russian Federation then such legal regulation, which would provide exceptions to the rule that all permanent residence permits that had been issued to citizens of the Russian Federation on the basis of Para 8 of Section 24 (1) of Immigration Law become invalid, could not be recognised as being an equally effective solution.

Finally, the restriction on fundamental rights is linked, *inter alia*, also to the protection and strengthening of the official language, therefore, derogations from the obligation to pass the examination of the proficiency in the official language in A2 degree, among other, for instance, an obligation to attend Latvian language

courses, could not be considered as being a measure that is less restrictive upon a person's fundamental rights. Such exemptions from the requirement, set in the contested provision, would mean that the legitimate aims, indicated by the legislator, would not be reached in the same quality because a large part of the citizens of the Russian Federation would continue residing in Latvian without basic proficiency in the official language.

20.3. In assessing the possible measure, indicated by the Applicants, which could be less restrictive on a person's fundamental rights – imposing national and international sanctions, the aims of the contested provision and the mechanism of sanctions should be taken into considerations

Section 2 (1) of “Law on International Sanctions and National Sanctions of the Republic of Latvia” stipulates that the purpose of this law to ensure peace, security and rule of law in accordance with the international obligations and national interests of Latvia. Pursuant to Section 3 of this law, the Cabinet imposes national sanctions upon its own initiative, as well as upon a proposal of the Minister for Foreign Affairs or the National Security Council. It does not follow from “Law on International Sanctions and National Sanctions of the Republic of Latvia” that every citizen of the Russian Federation who has received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law will be screened with the purpose of establishing whether there are grounds for imposing sanctions on them.

As established above, the aim of the contested provision is both diminishing the risks to national security, by screening, in the process of granting a new residence permit, every citizen of the Russian Federation, and protecting the official language and promoting its use in daily life. Hence, sanctions would not reach the legitimate aims of the restriction on fundamental rights in the same quality as the restriction set out in the contested provision.

Thus, there are no more lenient measures that would allow reaching the legitimate aims of the restriction on fundamental rights in at least the same quality.

21. In assessing the compliance of the restriction with the legitimate aim of the restriction on fundamental rights, it must be verified whether the adverse consequences that a person incurs as the result of the restriction on their fundamental rights outweigh the benefit that society in general gains from this

restriction (*see, for example, Judgement by the Constitutional Court of 7 March 2017 in Case No. 2016-07-01, Para 25*).

In the particular case, the tasks of the legislator, in defining that the permanent residence permits become invalid and giving to persons the possibility to obtain other legal grounds to continue residing in Latvia, was to balance the rights of citizens of the Russian Federation to inviolability of private life, included in Article 96 of the Constitution, with the legitimate aims of the restriction on fundamental rights, included in the contested provision, – ensuring protection of national security and the official language. Hence, the Constitutional Court must verify whether the contested provision has ensured a fair balance between these various rights and lawful interests – a person’s right to inviolability of private life and the benefit gained by society from decreased threats to national security and reinforced protection of the official language.

The European Court of Human Rights has concluded that the right to inviolability to private life does not guarantee to a person the receipt of a particular type of residence permit if the solution, offered by the State, allows the person to exercise the right to inviolability of private life without interference (*see Judgement by the European Court of Human Rights of 17 January 2006 in Case “Aristimuño Mendizabal c. France”, Application No. 51431/99, Para 66*). In particular, if the residence permit gives the person the right to reside on the territory of the particular state and freely exercise their right to inviolability of private life, the granting of such permit, substantially, is a sufficient measure for meeting the requirements of Article 8 of the Convention. In such circumstances, the granting of one particular legal status is a matter of choice for the State (*see Judgement by the European Court of Human Rights of 21 June 2016 in Case “Ramadan v. Malta”, Application No. 76136/12, Para 91*). The Applicants have noted that, in order to obtain the status of a long-term resident of the European Union, a person must prove their proficiency in the official language, as well as having sufficient and regular income and that they have resided continuously in Latvia also before the contested provision was adopted. However, it should be taken into account that, in order to continue residing in Latvia, apart from the status of a long-term resident of the European Union, a person has been given the possibility to acquire another type of residence permit.

Therefore, the Constitutional Court must verify whether the contested provision, substantially, allows a person to exercise their right to inviolability of

private life without interference, by obtaining new legal grounds to continue residing in the territory of Latvia.

Article 1 of the Constitution provides that Latvia is an independent democratic republic. The principle of legitimate expectations, which is derived from the basic norm of a democratic state governed by the rule of law, falls within the scope of Article 1 of the Constitution. It protects the rights a person has acquired, i.e., a person may expect that the rights, acquired in accordance with a valid legal act, will be retained and actually implemented within a certain period of time (*see Judgement by the Constitutional Court of 8 March 2017 in Case No. 2016-07-01, Para 16.2.*). However, this principle does not prohibit the State from amending lawfully the existing regulation, taking into account those right, with respect to which a person might have developed expectations regarding retaining or exercising thereof. The principle of legitimate expectations requires the State, in amending normative regulation, to respect reasonable balance between a person's expectations and those interests, for the serving of which the regulation is changed (*see Judgement by the Constitutional Court of 6 December 2010 in Case No. 2010-25-01, Para 4*). In the present case, it should be taken into account that Para 8 of Section 24 (1) of Immigration Law, on the basis of which a permanent residence permit had been issued to a person, could create a person's legitimate expectations that they would be able to continue residing in Latvia, by complying with the requirements set. Therefore, the Constitutional Court must also verify whether, by imposing on a person the obligation to obtain new legal grounds for residing in Latvia and setting requirements for obtaining thereof, reasonable balance has been ensured between a person's legitimate expectations and public interests, for the sake of which the respective regulation was changed. In this regard, it is important whether the legislator, in amending the legal regulation, has established a lenient transition to the new regulation so that a person could obtain new legal grounds that would allow them to continue residing on the territory of Latvia.

21.1. After the First Amendments entered into effect, a person was given more than 11 months for submitting certification proving the passing of the examination of the proficiency in the official language in A2 degree. As explained above, the contested provision ensured the possibility to take the examination of the proficiency in the official language at least twice to all those who had expressed the wish to take this examination and, accordingly, the term of validity of the permanent residence permit was extended – until 31 December 2023 or the date

when the final ruling in the case regarding requesting the status of a long-term resident of the European Union comes into effect.

Later, adopting the Third Amendments, the legislator added Para 58⁶ and Para 58⁸ to Transitional Provisions. These legal provisions stipulate: if a person has taken the examination of the proficiency in the official language, complying with the requirements set in the contested provision, but, until 30 November 2023, has not passed it or it has been established that the person has not taken the examination of the proficiency in the official language due to valid reasons, they have the right to request a permit for staying in the Republic of Latvia, which is issued for two years. To receive such a permit, a person must commit to master the official language within the period of validity of the permit. Thus, a person, actually, is given two additional years for passing the examination of the proficiency in the official language in A2 degree and, accordingly, for obtaining the status of a long-term resident of the European Union.

The Centre has indicated that, most often, 240–300 hours are needed to master the Latvian language in A2 degree if the person has no preliminary knowledge. However, as pointed out by the Centre's representative at the court hearing, a large part of persons to whom the contested provision applies are proficient in the Latvian language at least in A1 degree because these persons have resided permanently in Latvia. The number of hours, most frequently set for mastering the language in A2 degree specifically, is 120–150. Moreover, the State Language Centre has noted that the term set for passing the examination of the proficiency in the official language, set in the contested provision, had been sufficient and the even persons without any preliminary knowledge would objectively be able to meet these requirements within this term.

The Applicants have referred to circumstances that might impact a person's ambition to pass the examination of the proficiency in the official language, e.g., age and insufficient computer skills. However, it should be taken into account that Regulation No. 157 defines cases where a person does not take the examination of the proficiency in the official language, *inter alia*, Sub-para 7.6. stipulates that this examination is not taken by a person who has reached the age of 75. At the court hearing, the Centre explained and it also followed from the annotation to Regulation No. 157 that the selected age threshold was evidence-based. Whereas pursuant to Para 9 of Regulation No. 157, an examination with easements is taken by persons who have some functional restrictions, referred to in Annex 2 to this Regulation. As pointed out by the Centre, taking into account the possibility that

persons might encounter difficulties in fulfilling the linguistic tasks on a computer, they were provided additional information about where and how anyone could try fulfilling the Latvian language tasks online. Moreover, the way in which these tasks were fulfilled were not the decisive factor for successfully passing the examination because, most frequently, the examination is not passed due to insufficient writing skills but the tasks in writing are not fulfilled online. The Centre's representative explained at the court hearing that technical support has been provided to persons who had experienced difficulties in taking the examination of the proficiency in the official language online.

The process of mastering a language is influenced by various factors, also the person's age, the previous experience in learning languages, learning skills, motivation, as well as other circumstances. However, it should be taken into consideration that the Applicants and the persons to whom the contested provision applies are former citizens or non-citizens of Latvia and Latvian is the official language in Latvia. In view of this, the Constitutional Court concludes that the possibility, envisaged by the legislator, to take the examination of the proficiency in the official language several times, as well as the term set for passing the examination of proficiency in the official language in A2 degree, which does not require anything more than simplified communication on daily matters, is proportional.

21.2. Assessing the requirement regarding sufficient and regular monthly income and requirements regarding continuous residing on the territory of Latvia, the Second and the Third Amendments should be taken into account.

Pursuant to Para 2 of Section 1 of "Law on the Status of a Long-term Resident of the European Union in the Republic of Latvia", sufficient subsistence provisions are regular and stable monthly income in the amount of at least one minimum monthly wages or a pension granted to a person in the Republic of Latvia. The legislator, taking into account that part of persons, to whom the contested provision applies, receive a pension of the Russian Federation, has adopted the Second Amendments and added Para 58³ to Transitional Provisions of Immigration Law, which provides that sufficient subsistence provision is a pension granted to a person, also a pension granted by the Russian Federation.

If a person lacks sufficient financial means – stable monthly income in the amount of at least one minimum monthly wages or of the person is unable to meet the requirements regarding continuous residence, defined in "Law on the Status of a Long-term Resident of the European Union in the Republic of Latvia",

Para 58⁵ of Transitional Provisions of Immigration Law is applicable to them. I.e., if a person has passed the examination of the proficiency in the official language but cannot obtain the status of a long-term resident of the European Union either because the period of absence from the Republic of Latvia has been exceeded or because of insufficient financial means, they have the right to apply for a new permanent residence permit on the basis of Para 7 of Section 24 (1) of this law.

In such a case, the means of subsistence actually at the disposal of the person are considered as being sufficient financial resources, in accordance with Para 58¹⁰ of Transitional Provisions of Immigration Law. Likewise, Para 3 of Cabinet Regulation of 25 April 2017 No. 225 “Regulation on the Amount of Financial Resources needed by a Foreigner and the Determination of the Existence of Financial Resources”, which provides that sufficiency of financial resources in determined through individual assessment of each situation, should be taken into account. Moreover, as explained by the Office at the court hearing, it is not required that these should mandatorily be the financial resources of the person but the sufficiency thereof is assessed more broadly, taking into account, for example, the financial resources of the respective person’s family members.

The requirement regarding continuous residing in the territory of Latvia, in turn, was in effect already before the contested provisions entered into effect. I.e., pursuant to Sub-para 1 of Para 58¹⁰ of Transitional Provisions of Immigration Law, in reviewing an application by a citizen of the Russian Federation for receiving a permanent residence permit, it must be established that none of the conditions, referred to in Section 36 (1) of this law has set in, whereas, pursuant to Para 4 of Section 36 (1), it must be established that the foreigner does to stay continuously outside the Republic of Latvia for more than 12 months. As noted by the Office, such requirements applied to Applicants already at the time when the permanent residence permit, issued to them, was valid. Namely, pursuant to Para 4 of Section 36 (1) and the third part of this Section, already previously, a permanent residence permit of a person could be annulled if they did not comply with the continuous residence requirement, i.e., if the person stayed continuously outside the Republic of Latvia for more than 12 months.

In view of the above, it can be concluded that the legal regulation that pertains to the requirement of sufficient and regular monthly income and the requirement regarding continuous residing in Latvia, has been created in a way not to turn the compliance with these requirements into disproportionate burden.

The Constitutional Court recognises that if the issued permanent residence permit becomes invalid it can cause adverse consequences. If a person has not taken the examination of the proficiency in the official language and has not applied for receiving another residence permit within the term set in Para 58 of Transitional Provisions of Immigration Law then, pursuant to Section 41 (1) of Immigration Law, a return decision may be issued or, successively, pursuant to Section 46 (2), a removal order for the foreigner can be issued. However, it should be taken into consideration: the fact that a person does not do anything for themselves but reconciles oneself with the consequences envisaged by the legal provision proves that this person is not particularly interested in defending one's fundamental rights (*compare, see Judgement by the Constitutional Court of 26 November 2002 in Case No. 2002-09-01, Para 1 of the Findings*). Thus, if the protection of one's private life is important for a person and if they wish to retain the social ties that have developed in the country but even do not attempt to take the examination of the proficiency in the official language then the annulment of the permanent residence permit, issued to this person, and possible removal of this person cannot be considered as being a disproportionate measure.

Thus, it has to be recognised that the contested provision, if viewed systemically in conjunction with other legal provisions, gives to a person a real possibility for obtaining new legal grounds to continue residing on the territory of Latvia. Likewise, a lenient transition to the new regulation has been ensured and the principle of protecting legitimate expectations has been complied with. The legislator has envisaged a sufficient period of time for passing the examination of the proficiency in the official language for a motivated person. The contested provision does not make the requirement regarding continuous residing and sufficient financial resources stricter with respect to persons who have to obtain new legal grounds for residing in Latvia. Hence, the benefit that society gains from the restriction, included in the contested provision, aimed at strengthening national security and the official language, outweighs the damage inflicted upon a person's rights and lawful interests.

Thus, the restriction on a person's fundamental rights, included in the contested provision, is proportional and the contested provision complies with Article 1 and Article 96 of the Constitution.

22. The Applicants holds that the contested provision is incompatible also with the principle of legal equality, included in the first sentence of Article 91 of

the Constitution. Allegedly, the Applicants – citizens of the Russian Federation – are placed in an unequal situation with all other former citizens and non-citizens of Latvia who have become citizens of other states and have received a permanent residence permit, in accordance with Para 8 of Section 24 (1) of Immigration Law. The differential treatment had not been established by a legal provision, adopted in due procedure, likewise, it is said to lack objective and reasonable grounds. The *Saeima* had not conducted comparative assessment of the treatment of citizens of the Russian Federation who had received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law and those citizens of the Russian Federation who had received a permanent residence permit in accordance with Law on Foreigners, which has become void.

The first sentence of Article 91 of the Constitution provides: “All human beings in Latvia shall be equal before the law and the courts.”

To assess whether the contested provision complies with the principle of legal equality, falling within the scope of the first sentence of Article 91 of the Constitution, the Constitutional Court must establish:

- 1) whether and which persons (groups of persons) are in similar and according to certain criteria comparable circumstances;
- 2) whether the contested provision envisages equal or differential treatment of these persons (groups of persons);
- 3) whether such treatment has been established by a law, adopted in due procedure;
- 4) whether such treatment has objective and reasonable grounds; i.e., whether it has a legitimate aim and whether the principle of proportionality has been complied with (*see, for example, Judgement by the Constitutional Court of 29 June 2018 in Case No. 2017-28-0306, Para 11*).

22.1. The Constitutional Court will examine, first and foremost, whether the contested provision envisages unfoundedly differential treatment of citizens of the Russian Federation compared to all other former citizens and non-citizens of Latvia who have become citizens of other states and have received a permanent residence permit in compliance with Para 8 of Section 24 (1) of Immigration Law.

The Constitutional Court has recognised: to determine whether and which groups of persons are in accordance with certain criteria comparable circumstances, the main feature uniting these groups should be found. Moreover, the Constitutional Court must also review whether there are no significant considerations indicating that such groups of persons are not in comparable

circumstances (*see Judgement by the Constitutional Court of 23 May 2022 in Case No. 2021-18-01, Para 32*).

The Applicants point out that the permanent residence permits issued to all foreigners are similar and, after a permanent residence permit has been issued, similar rules regarding refusal to register this permit or annulment of the permit are applied to all foreigners. Hence, all foreigners who received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law are said to be in comparable circumstances. The *Saeima*, however, notes that, in the context of the contested provision, citizens of the Russian Federation are not in similar and comparable circumstances with other foreigners because the number of residence permits issued to citizens of the Russian Federation constitutes the absolute majority of all permanent residence permits issued in the procedure established by Para 8 of Section 24 (1) of Immigration Law. The circumstance that indicates that citizens of the Russian Federation are not in comparable circumstances with other foreigners is the war that the Russian Federation has launched in Ukraine.

The Constitutional Court has already explained in this judgement above the purpose why the contested provision and the requirements included therein are applied directly to citizens of the Russian Federation. I.e., adoption of the contested provision was linked to the war that the Russian Federation had launched in Ukraine and, accordingly, possible risks to the national security of Latvia. Thus, the Constitutional Court has no grounds for concluding that citizens of the Russian Federation would be in similar and according to certain criteria comparable circumstances with all other foreigners who have received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. The countries of other foreigners' citizenship are not neighbouring with Latvia, have not launched warfare in their neighbouring states and have not, historically, jeopardised the national security of Latvia.

Therefore, citizens of the Russian Federation are in different and incomparable circumstances in relation to other foreigners who have received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. Pursuant to the contested provision, only the permanent residence permits of citizens of the Russian Federation who have received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law becomes invalid after a certain term. Therefore the treatment of persons who are in different and incomparable circumstances is different.

22.2. The Constitutional Court has yet to assess whether the contested provision envisages unfounded differential treatment of those citizens of the Russian Federation who have who have received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law and those citizens of the Russian Federation who have received a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners.

22.2.1. The Applicants note that no difference between the two respective groups of citizens of the Russian Federation can be discerned, i.e., that all these persons are in similar and according to certain criteria comparable circumstances.

The *Saeima*, however, points out that the two aforementioned groups of persons are not in similar and according to certain criteria comparable circumstances because the criteria for acquiring a permanent residence permit have been different.

Section 23¹ (1) of Law on Foreigners provided that those foreigners who, on 1 July 1992, had registered residence without temporal limitations in the Republic of Latvia, could receive a permanent residence permit if they, also at the moment of applying for a permanent residence permit, had registered residence without temporal limitations in the Republic of Latvia and had been registered in the Population Register. Whereas Para 8 of Section 24 (1) of Immigration Law provided the right to receive a permanent residence permit only to those foreigners, living in the Republic of Latvia, who prior to acquiring the citizenship of another state had been citizens or non-citizens of Latvia.

Pursuant to information provided by the Office, 1262 persons who prior to acquiring citizenship of the Russian Federation had been non-citizens of Latvia, as well as 37 persons who prior to acquiring citizenship of the Russian Federation had been citizens of Latvia received a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners. Thus, persons, who have become citizens of the Russian Federation and, prior to acquiring the citizenship of this State, had been citizens or non-citizens of Latvia are both among the persons who have received a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law and those persons who have received it on the basis of Section 23¹ (1) of Law on Foreigners.

Both groups of persons had to comply with similar rules regarding applying for a permanent residence permit, which provided for filling in a questionnaire in a certain form, submitting a photo, paying the state duty and presenting a valid travel document. Likewise, legal provisions established a simplified procedure for

acquiring a permanent residence permit with respect to both groups. I.e., in both cases the obligation, e.g., to prove a certain proficiency level in the official language, was not defined. The only difference was that Section 23¹ (1) of Law on Foreigners envisaged a person's registered residence in Latvia as a pre-condition for issuing a permanent residence permit. However, when "Declaration of Place of Residence Law" entered into effect the institution of registered residence ceased to exist.

Thus, in the framework of the present case, all those citizens of the Russian Federation who are former citizens or non-citizens of Latvia and have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law or Section 23¹ (1) of Law on Foreigners are in similar and according to certain criteria comparable circumstances.

22.2.2. Pursuant to the contested provision, only for those citizens of the Russian Federation who have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law this permit becomes invalid after the defined term. At the court hearing, the Office explained that this permit did not become invalid for those citizens of the Russian Federation to whom the permanent residence permit had been issued on the basis of Section 23¹ (1) of Law on Foreigners. Accordingly, these persons do not have to obtain new legal grounds to continue residing in Latvia.

Thus, the contested provision establishes differential treatment of groups of persons who are in similar and according to certain criteria comparable circumstances.

22.2.3. The Constitutional Court, already in assessing the compliance of the contested provision with Article 1 and Article 96 of the Constitution, recognised that the restriction on fundamental rights, included in the contested provision, had been established by a legal provision, adopted in due procedure. Therefore, successively, the Constitutional Court must verify whether the differential treatment, envisaged by the contested provision, has a legitimate aim.

As concluded above, the contested provision is directed at protecting national security and the official language. However, the Constitutional Court points out that, with respect to the protection of the official language, the differential treatment, included in the contested provision, lacks a legitimate aim. I.e., to the extent that the contested provision is directed at ensuring that as large part of Latvia's society as possible would be able to engage in basic-level communication in the official language, no grounds can be discerned why the same

requirement should not be applied also to those citizens of the Russian Federation who have acquired a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners.

However, as regards the national security, it should be taken into consideration that the number of those citizens of the Russian Federation who have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law is much higher compared to that of citizens of the Russian Federation who have acquired a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners. As indicated by the *Saeima's* representative at the court hearing, 25 216 persons have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. Whereas the number of persons who, prior to becoming citizens of the Russian Federation, had been citizens or non-citizens of Latvia and had acquired a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners is 1299.

Since the legislator has established that citizenship of the Russian Federation is linked to threats to national security and therefore, in view of these potential threats, individual screening of citizens of the Russian Federation, residing in Latvia, should be conducted as soon as possible, the Constitutional Court concludes that applying the new requirements directly to the largest group of citizens of the Russian Federation, living in Latvia, was logical and aimed at protecting public security.

Thus, the differential treatment, included in the contested provision, has a legitimate aim.

22.2.4. In assessing whether the legislator, in establishing differential treatment by the contested provision, had complied with the proportionality principle, the legislator's broad discretion in the area of immigration should be taken into account, in particular, in a case requiring response to possible threats to national security. The legislator has the right, for the sake of protecting public security, to assess the degree of the potential threats to security and decide, accordingly, on establishing a restriction on fundamental rights. However, the Constitutional Court has to verify whether the legislator, by establishing differential treatment of groups of persons who are in similar and comparable circumstances, has not exceeded the limits of discretion granted to it (*compare, see Judgement by the Constitutional Court of 26 November 2009 in Case No. 2009-08-01, Para 21*). I.e., the Constitutional Court has to ascertain whether the legislator, acting within the limits of its broad discretion, has based the differential

treatment, established in the contested provision, on objective and reasonable considerations, *inter alia*, has not violated the principle of prohibition of arbitrariness.

Starting the identification of the totality of Latvian citizens, the Supreme Council, in the decision of 15 October 1991 “On the Restoration of the Rights of Citizens of the Republic of Latvia and the Basic Rules of Naturalization”, stipulated that those persons who belong to the totality of citizens of the Republic of Latvia and who held the citizenship of the Republic of Latvia on 17 June 1940 and the descendants of such persons, who at the moment when this decision came into effect lived in Latvia, had to register by 1 July 1992. Other persons who at the moment when this decision came into effect had registered their permanent residence in Latvia also had to register by the said date. Thus, after 1 July 1992, it was possible not only to identify the totality of Latvian citizens but also other persons, living in Latvia, *inter alia*, foreigners living in Latvia. The above points to the fact that purpose of Section 23¹ (1) of Law on Foreigners was to regulate the actual situation that had developed after independence of the Republic of Latvia had been restored, i.e., there were several thousands of such persons who had their residence registered and lived in Latvia permanently but were citizens of another state.

The main criteria for issuing a permanent residence permit, included in Para 8 of Section 24 (1) of Immigration Law, was the former legal status of the person – a person had been a citizen or a non-citizen of Latvia and had acquired the citizenship of another state later. I.e., the purpose of this provision was to allow former citizens and non-citizens of Latvia, irrespectively of the length of their stay in Latvia, to receive a residence permit in a more simplified procedure compared to other legal grounds, defined in Immigration Law. To create simplified regulation on receiving a permanent residence permit exactly for those persons who had been citizens or non-citizens of Latvia was a deliberate choice made by the legislator. It points to the legislator’s will to create certain easements for this particular group of persons, by not applying to it the requirements that were applied to other foreigners who had not been citizens or non-citizens of Latvia. Whereas Section 23¹ (1) of Law on Foreigners did not have the purpose of creating a simplified procedure for acquiring a permanent residence permit exactly for former citizens or non-citizens of Latvia because the respective legal provision did not single out these persons as a special group and was equally applicable to all foreigners.

Hence, Section 23¹ (1) of Law on Foreigners and Para 8 of Section 24 (1) of Immigration Law had different purposes. In one case, the circumstance that, following the restoration of independence, it was necessary to regulate the legal status of persons was decisive, whereas, in the second case, – the fact that the respective persons, prior to acquiring the citizenship of the Russian Federation, had been citizens or non-citizens of Latvia and, exactly due to this reason, the legislator chose to envisage for these persons a simplified procedure for acquiring a permanent residence permit.

Additionally, the Constitutional Cour recognises – and it follows also from the preparatory materials for the contested provision, i.e., the minutes of the sitting of Defence, Internal Affairs and Corruption Prevention Committee of the *Saeima* on 4 April 2023, that the Office had sent information to citizens of the Russian Federation who had acquired a permanent residence permit on the basis of Section 23¹ (1) of Law on Foreigners that the permanent residence permit issued to them remained valid. Thus, the legislator was aware and took into account the fact that there were two groups of citizens of the Russian Federation, of which one was informed that the new legal regulation did not apply to it, and deliberately chose to apply the contested provision only to the second group of citizens of the Russian Federation.

The Constitutional Court takes into account that the majority of the persons who have received a permanent residence permit in simplified procedure is constituted by those persons who have received this permit on the basis of Para 8 of Section 24 (1) of Immigration Law. It is equally important that, at the respective moment, the legislator had wished to envisage a simplified procedure for those persons exactly because they were former citizens or non-citizens of Latvia. The legislator, within the limits of its discretion, which is broad the area of immigration, has the right to reexamine whether such particularly favourable treatment, resulting in specific easements, should be retained.

Thus, it can be concluded that the legislator, enjoying broad discretion and identifying possible threats to national security, had the right to consider which group of persons will be screened first in the process of obtaining new legal grounds guaranteeing the possibility to reside in Latvia. Likewise, the solution to apply the particular restriction on fundamental rights to that group of persons, which is considerably larger than the other group and the persons belonging to which could acquire a permanent residence permit in a simplified procedure only

because they were former citizens or non-citizens of Latvia, should be considered as being objective and reasonable.

Thus, the legislator has not acted arbitrarily and there are objective and reasonable grounds for the differential treatment, envisaged in the contested provision, of groups of persons who are in similar and according to certain criteria comparable circumstances.

Hence, the contested provision complies with the first sentence of Article 91 of the Constitution.

23. The Applicants note that the contested provision does not envisage individual assessment of each case of potential expulsion and, thus, complies with the concept of collective expulsion of aliens, included in Article 4 of Protocol 4 to the Convention. Article 4 of Protocol 4 to the Convention provides: “Collective expulsion of aliens is prohibited.”

The Constitutional Court has pointed out: if an application comprises a claim regarding assessment of the compliance of the contested provisions with international agreements, entered into by Latvia, which are not contrary to the Constitution, the Constitutional Court must ascertain why the compliance of the contested provision with a provision of international law should be reviewed separately from the provision of the Constitution. I.e., it should be established that the scope of protection for fundamental rights, defined by the international law provision is broader, different from the one provided by the Constitution (*compare, see, for example, Judgement by the Constitutional Court of 7 November 2019 in Case No. 2018-25-01, Para 17, and Judgement of 5 December 2019 in Case No. 2019-01-01, Para 16.3.1.*). Thus, also in the present case, the Constitutional Court must verify, first and foremost, whether it has grounds for reviewing separately the compliance of the contested provision with Article 4 of Protocol 4 to the Convention.

23.1. The European Court of Human Rights has explained that the main purpose of Article 4 of Protocol 4 to the Convention was not to permit that a State expels from its territory a certain number of foreigners, without examining their personal circumstances and, thus, without giving them the chance to present their arguments regarding the said action by the State (*see Judgement by the Grand Chamber of the European Court of Human Rights of 23 February 2012 in Case “Hirsi Jamaa and Others v. Italy”, Application No. 27765/09, Para 177*). Collective expulsion is any measure compelling aliens, as a group, to leave a

country, except where, before taking such a measure, the individual situation of each foreigner belonging to the group has been reasonably and objectively examined (*see. Judgement by the Grand Chamber of the European Court of Human Rights of 15 December 2016 in Case “Khalifia and Others v. Italy”, Application No. 16483/12, Para 237*).

Article 97 of the Constitution applies to the freedom of movement of a person who resides legally on the territory of Latvia. From the moment a person's presence on the territory of a State ceases to be lawful, they no longer can lay claim to the right to liberty of movement and freedom to choose one's residence within that territory (*see “Guide on Article 2 of Protocol No. 4 to the European Convention on Human Rights” by the Council of Europe, Para 35. Available: echr.coe.int*). Thus, it can be concluded that Article 97 of the Constitution does not apply to such cases where a permanent residence permit, previously issued to a person, has become invalid and, accordingly, this person no longer has lawful grounds for staying on the territory of Latvia. Article 98 of the Constitution, in turn, applies to every person's right to leave Latvia, the right of person who is a holder of a Latvian passport to return to Latvia, as well as the right of a citizen of Latvia not to be extradited to foreign states. Para 1 of Section 1 of Immigration Law provides that a foreigner is a person who is not a Latvian citizen or non-citizen of Latvia. Since the Applicants' arguments are not linked to their right to leave Latvia and they are foreigners, neither does this provision of the Constitution pertain to the Applicants' situation.

Hence, it can be concluded that neither Article 97 nor Article 98 of the Constitution comprises prohibition of collective expulsion of foreigners who previously had acquired a permanent residence permit. It also should be taken into account that Para 1 of Article 2 of Protocol 4 to the Convention is analogous to Article 97 of the Constitution, whereas Para 2 of Article 2 and Para 2 of Article 3 of Protocol 4 to the Convention correspond to the provisions set out in Article 98 of the Constitution. Also the fundamental rights, defined in Article 97 and Article 98 of the Constitution, are included in some provisions of the Convention; however, the Convention envisages specific prohibition of collective expulsion, which is included in a separate provision – Article 4 of Protocol 4. It has been explained that Article 4 of Protocol 4 to the Convention prohibits exactly the collective expulsion of foreigners and not the collective expulsion of other persons, which is regulated by other provisions of Protocol 4 to the Convention (*see “Guide*

on Article 3 of Protocol No. 4 of the European Convention on Human Rights” by the Council of Europe, Para 3. Available: echr.coe.int).

The Constitutional Court concludes that Article 4 of Protocol 4 to the Convention establishes a different scope of protection for fundamental rights because a provision with the same or similar content has not been included in the Constitution.

Hence, in the present case, there are grounds for reviewing separately compliance of the contested provision with Article 4 of Protocol 4 to the Convention.

23.2. The Applicants hold that the contested provision does not envisage individual assessment since it had been adopted with the purpose of targeting all citizens of the Russian Federation, taking into account the legislator’s considerations regarding the increased security risks created by these persons. I.e., the purpose of the contested provision is depriving a certain group of foreigners of the right to reside on the territory of Latvia because these foreigners, allegedly, are causing increasing security risks as a group and not each person individually. Thus, the grounds for annulling a residence permit is not linked to a person’s actions but the actions by the state of the person’s citizenship and the provisions set out in the contested provisions correspond to the concept of collective expulsion. The *Saeima*, in turn, points out that the contested provision does not envisage a person’s expulsion from Latvia without individual assessment of this person’s situation.

The European Court of Human Rights has noted: the fact that a number of aliens are subject to similar decisions does not itself lead to the conclusion that a collective expulsion has taken place if each person concerned had been given the opportunity to submit arguments against their expulsion to the competent institutions on an individual basis (*see Judgement by the European Court of Human Rights of 20 September 2007 in case “Sultani v. France”, Application No. 45223, Para 81*).

Thus, in the present case, the fact that the contested provision applies only to citizens of the Russian Federation and envisages that the permanent residence permit becomes invalid *per se* does not mean that this situation should be considered as being collective expulsion of foreigners. Hence, the Constitutional Court must verify whether the contested provision in conjunction with other legal provisions envisages individual assessment of each person’s situation.

23.2.1. The contested provision defines different terms when a permanent residence permit, previously issued to a citizen of the Russian Federation on the basis of Para 8 of Section 24 (1) of Immigration Law, becomes invalid and these terms depend upon the person's own actions.

Moreover, the contested provision does not envisage automatic expulsion from Latvia of foreigners – citizens of the Russian Federation who have acquired a permanent residence permit on the basis of Para 8 of Section 24 (1) of Immigration Law. These persons have been given the possibility to obtain the status of a long-term resident of the European Union, the right to apply for a new permanent residence permit, the right to apply for a permit to stay in Latvia in order to acquire, within two years, the status of a long-term resident of the European Union or another residence permit. Moreover, the possibility to apply for a permit to stay in Latvia is linked not only to whether a person has tried to pass an examination of the proficiency in the official language by 30 November 2023 but also to whether there are valid reasons why the person has not taken this examination.

In this regard, it should be taken into account that the contested provision, systemically, in conjunction with other provisions of Transitional Provisions of Immigration Law, sets out preconditions allowing citizens of the Russian Federation to retain their right to stay on the territory of Latvia and does not regulate expulsion of foreigners from the state. Moreover, the possibility to obtain the legal grounds for the right to reside in Latvia, e.g., the status of a long-term resident of the European Union, to a large extent depends on the person's own actions, i.e., whether the person has chosen to take the actions needed for obtaining the said status.

Likewise, it should be taken into account that, also in the process of taking the examination of the proficiency in the official language, as mentioned above, individual circumstances are taken into considerations and, in certain cases, a person can be exempt or partially exempt from the duty to pass the examination of the proficiency in the official language.

23.2.2. If the permanent residence permit becomes invalid in accordance with the contested provision and the person, within the defined period of time, does not obtain new legal grounds for residing on the territory of Latvia, voluntary return decision or removal order can be adopted with respect to this person, i.e., a situation may occur where a person has to leave the territory of Latvia.

However, the contested provision does not affect and does not revoke the procedure for adopting a voluntary return decision or removal order and appealing against these.

Pursuant to Section 50 (1) of Immigration Law, a foreigner has the right, within seven days after entering into effect of the voluntary return decision or removal order, to contest these to a higher authority in accordance with the procedures regarding subordination. Pursuant to the first and the second part of Section 50¹ of Immigration Law, the decision of a higher authority on the issue of the voluntary return decision or the removal order may be appealed to the District Administrative Court within seven days from the day when it has entered into effect and a judgment of the District Administrative Court may be appealed by submitting a cassation complaint to the Department of Administrative Cases of the Supreme Court. Thus, also within the framework of administrative proceedings, a person has the right to express one's arguments regarding the voluntary return decision or the removal order. Within administrative proceedings, Section 47 of Immigration Law must be taken into account, it provides that a foreigner shall not be removed if removal is in contradiction with Latvia's international commitments and, thus, the compliance of a foreigner's removal also with requirements of the Convention is reviewed. Thus, both the authority and the court must assess the individual circumstances of each person.

In view of all the above, the Constitutional Court concludes that the contested provision, in conjunction with other provisions of Immigration Law, requires taking into account a person's individual circumstances, as well as makes the possible removal from Latvia dependent on a person's own actions. Even if a person does not acquire the status that would allow to continue residing on the territory of Latvia a person may express arguments against expulsion both to the competent authority and to the court, and they have to review these arguments in each individual case.

Hence, the contested provision is compatible with Article 4 of Protocol 4 to the Convention.

The Substantive Part

On the basis of Para 6 of Section 29 and Sections 30–32 of Constitutional Court Law, the Constitutional Court

held:

1. To terminate legal proceedings in the case in the part regarding compliance of Section 5 of the law of 22 September 2022 “Amendments to Immigration Law”, insofar Para 8 of Section 24 (1) of Immigration Law is deleted by it, with Article 1, the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. To recognise Para 58 of Transitional Provisions of Immigration Law (in the wording that is in force since 20 April 2023) as being compatible with Article 1, the first sentence of Article 91, Article 96 of the Constitution and Article 4 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The judgement is final and not subject to appeal.

The judgement was pronounced in Riga on 15 February 2024.

The judgement enters into effect at the moment it is pronounced.

Chairperson of the court hearing

Aldis Laviņš