



In line with Resolution II adopted by the Circle of the Presidents at its meeting held on 13 June 2018 in Prague, the theme of the XVIII<sup>th</sup> Congress of the Conference of European Constitutional Courts to be held in Prague from 26 to 29 May 2020 will be:

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:  
THE RELATIONSHIP OF INTERNATIONAL, TRANSNATIONAL AND NATIONAL CATALOGUES IN THE  
21ST CENTURY**

**QUESTIONNAIRE FOR THE XVIII<sup>th</sup> CONGRESS  
OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS**

**I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

**I.I International catalogues of human rights (ECHR, UDHR and ICCPR)**

- In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?

The position of international human rights treaties in Latvia is a prominent one, since Article 89 of the Constitution<sup>1</sup> explicitly provides that „[t]he State shall recognise and protect fundamental human rights in accordance with the Constitution, laws and international agreements binding upon Latvia“. In practice, the Constitutional Court applies international human rights law in order to clarify the content of the fundamental rights set out in the Constitution. The Constitutional Court frequently reiterates in its judgments that Article 89 of the Constitution demonstrates that the legislator’s purpose had been to achieve harmony between the human rights included in the Constitution and international legal norms.<sup>2</sup>

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<sup>1</sup> The Constitution is available in English: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia>.

<sup>2</sup> See, for instance, the judgment of 13 May 2005 in the case no. 2004-18-0106, para. 5 of the motives (available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf)), judgment of 18 October 2007 in the case no. 2007-03-01, para. 11 (available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/01/2007-03-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/01/2007-03-01_Spriedums_ENG.pdf)), and judgment of 2 July 2015 in the case no. 2015-01-01, para. 11 (available in English: <http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-01->

- What mechanism is used to invoke the international treaties in national court decision-making?

Latvian legal system is characterised by its openness to international law.<sup>3</sup> Pursuant to the doctrine of monism, international legal provisions that are binding upon the Republic of Latvia are applied directly in Latvia.<sup>4</sup>

In fact, particularly in the first years after the establishment of the Constitutional Court of the Republic of Latvia the provisions of the domestic law were assessed exactly with regard to their compatibility with human rights guaranteed by various international instruments.<sup>5</sup> For instance, in case no. 2000-03-01<sup>6</sup> the Court assessed the compliance of the contested provisions of Latvian law not only with the Constitution but also with ECHR and ICCPR. Case no. 2004-15-0106<sup>7</sup> concerned the compliance of the contested norms with the Constitution, ECHR, ICCPR and also the Convention on the Reduction of Number of Stateless Persons. Case no. 2004-18-0106<sup>8</sup> revolved around the question of compatibility of national law with the Constitution, ECHR, ICCPR and also the UN Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination.

- Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

As mentioned previously, Article 89 of the Constitution and Article 16(6) of the Constitutional Court Law<sup>9</sup> allow to invoke the direct effect of international catalogues of human rights. Nevertheless, international human rights instruments contain only the minimum standard of human rights protection. The Constitution provides for an equivalent or a higher standard of protection.<sup>10</sup> Therefore in recent years the Constitutional Court has been more reluctant to initiate cases concerning the compatibility of domestic law with international human rights instruments and it has postulated that applicants that request the Constitutional Court to carry out such and assessment ought to provide reasons that indicate that the standard of human rights protection guaranteed by the invoked international human rights

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<sup>3</sup> This is similar to the concept of *Völkerrechtsfreundlichkeit* as developed in the case-law of the German Federal Constitutional Court.

<sup>4</sup> Separate opinion of judges Sanita Osipova and Ineta Ziemele in the case no. 2015-19-01, para 5. No English translation of the separate opinion is available.

<sup>5</sup> Article 16(6) of the Constitutional Court Law (available in English:

<https://likumi.lv/ta/en/en/id/63354-constitutional-court-law>) empowers the Court to assess the “conformity of Latvian national legal norms with those international agreements entered into by Latvia that are not in conflict with the Constitution”

<sup>6</sup> Judgment of 30 August 2000, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf).

<sup>7</sup> Judgment of 7 March 2005, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-15-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-15-0106_Spriedums_ENG.pdf).

<sup>8</sup> Judgment of 13 May 2005, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf).

<sup>9</sup> The Constitutional Court Law is available in English: <https://likumi.lv/ta/en/en/id/63354-constitutional-court-law>.

<sup>10</sup> Separate opinion of judges Sanita Osipova and Ineta Ziemele in the case no. 2015-19-01, para 5. No English translation of the separate opinion is available.

instrument is higher (or of a different scope) than that guaranteed by the Constitution.

## I.II Transnational catalogues of human rights (the Charter)

- Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by “radiating” through the national catalogues (a substantive point of reference in other states)?

References by the Constitutional Court to the Charter have been less frequent. The Constitutional Court has never examined a case concerning the compliance of Latvian law with the Charter and it has referred to the Charter in 11 cases, starting even prior to Latvia’s becoming a Member State of the EU and the Charter obtaining full legal effect.<sup>11</sup> However, even after the Charter obtained full legal effect, the Constitutional Court has primarily referred to its text in order to reinforce its conclusions concerning the scope and application of fundamental rights guaranteed by the Constitution of the Republic of Latvia.<sup>12</sup>

- Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogues in your country by general courts, or as a source for judicial law-making?

The Constitutional Court in its judgment of 17 January 2007 in the case no. 2007-11-03<sup>13</sup> has noted that “upon ratification of the Treaty on Accession of Latvia to the European Union, the European Union law has become integral part of the Latvian legal system. Therefore, legal acts of the European Union and interpretation of these enshrined in the case-law of the European Court of Justice should be taken into account when applying national law”. Courts of general jurisdiction of the Republic of Latvia are active in applying the EU law,

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<sup>11</sup> See, for instance, the judgment of 19 March 2002 in the case no. 2001-12-01, para. 3.1.3 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/09/2001-12-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/09/2001-12-01_Spriedums_ENG.pdf), the judgment of 20 May 2003 in the case no. 2002-21-01, para. 1 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/12/2002-21-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/12/2002-21-01_Spriedums_ENG.pdf), the judgment of 27 June 2003 in the case no. 2003-04-01, para. 5 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-04-01\\_Spriedums\\_ENG-1.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-04-01_Spriedums_ENG-1.pdf).

<sup>12</sup> See, for instance, the judgment of 29 October 2010 in the case no. 2010-17-01, para. 7.2, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/03/2010-17-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/03/2010-17-01_Spriedums_ENG.pdf), the judgment of 14 March 2011 in the case no. 2010-51-01, para. 13, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/07/2010-51-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/07/2010-51-01_Spriedums_ENG.pdf), the judgment of 19 October 2011 in the case no. 2010-71-01, para. 13.2, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/11/2010-71-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/11/2010-71-01_Spriedums_ENG.pdf), the judgment of 12 May 2016 in the case no. 2015-14-0103, para. 15.1, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2015-14-0103\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/07/2015-14-0103_Spriedums_ENG.pdf), the judgment of 16 June 2016 in the case no. 2015-18-01, para. 10, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/07/2015-18-01\\_Judgment\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/07/2015-18-01_Judgment_ENG.pdf).

<sup>13</sup> Para. 25.4; available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/05/2007-11-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf).

including the case-law of the CJEU. However, the competence of Latvian courts of general jurisdiction is limited to resolution of particular disputes that come before those courts. It would be quite difficult to imagine that they could engage in “judicial law-making” as understood in the legal doctrine.

- Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, by making a request for preliminary ruling with the Court of Justice of the EU?

As noted previously, the case-law of the Constitutional Court of the Republic of Latvia with respect to the Charter is quite limited. However, should the need (or obligation) arise, the Constitutional Court is prepared to make the necessary requests for preliminary ruling to the CJEU, as it has previously done in two cases that did not directly concern the application of the Charter.<sup>14</sup>

When analysing the Charter prior to its entry into force in the “Lisbon Treaty case”<sup>15</sup> the Constitutional Court emphasised that the Charter is not contrary to the Constitution of the Republic of Latvia because both “are based on similar values and principles”.<sup>16</sup> In the same judgment the Constitutional Court indicated that a situation in which the Constitution would provide for a lower scope of protection of fundamental rights than international human rights instruments, including the Charter, would be contrary to the idea of a state governed by the rule of law that is included in Article 1 of the Constitution.<sup>17</sup>

### I.III National human rights catalogues

- Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?

The catalogue of human rights is included in Articles 89-116 of the Constitution. Its form is in line with the laconic style of the rest of the Constitution. It commences by the previously described Article 89 which lists the sources of human rights in the Republic of Latvia and concludes with Article 116 which outlines the mechanism to be used for restricting some of the rights listed in Articles 90 to 108 of the Constitution.

- What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

The Constitution of the Republic of Latvia was drafted in the beginning of 1920s and was adopted on 15 February 1922 (it entered into force on

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<sup>14</sup> See the judgment of the CJEU of 7 August 2018 in the case C-120/17 *Administratīvā rajona tiesa v. Ministru kabinets*. Case C-439/19 has been initiated on 2 August 2019 and is currently pending before the Court of Justice.

<sup>15</sup> The judgment of 7 April 2009 in the case no. 2008-35-01, available in English: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/09/2008-35\\_01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/09/2008-35_01_ENG.pdf)

<sup>16</sup> Para. 18.8.

<sup>17</sup> *Ibidem*.

7 November 1922). It was suspended after the *coup d'état* of 15 May 1934 and was gradually reinstated starting from the adoption of the Declaration of Restoration of the Independence of 4 May 1990. The Constitution was fully reinstated on 6 July 1993. Thus the Constitution of the Republic of Latvia is one of the oldest constitutions in the world. Not unusually for constitutions adopted in the beginning of the 20<sup>th</sup> century, it initially did not contain a human rights catalogue.<sup>18</sup>

The human rights catalogue was included in the Constitution of the Republic of Latvia pursuant to a constitutional amendment of 15 October 1998. Unlike the rest of the Constitution, which was to a large extent modelled upon the Weimar Constitution of Germany, the human rights part of the Constitution was not based on foreign examples but instead drafted anew. The main sources of inspiration of the drafters were the human rights catalogues contained in the ECHR and the ICCPR.

- What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

Part VIII of the Constitution has been amended on four occasions (Article 101 has been amended twice), on one occasion it was done in order to modify the wording of certain rights in connection with Latvia's accession to the European Union.

Article 76 of the Constitution describes the mechanism for amending the Constitution (by means of a qualified majority in the Parliament). No specific mechanism for amending the human rights catalogue is envisaged.

#### I.IV The mutual relationship between different catalogues of human rights

- Can you give examples from the case law of your court related to the use of any of the international catalogues?

Please see the cases cited in footnotes 2 and 6-8 above. For a more recent example, one could mention the judgment in the case no. 2015-01-01<sup>19</sup> in which the Court extensively referred to the case-law of the ECtHR in order to provide additional reasons for its conclusions: 1) that the freedom of expression protected by the Constitution of the Republic of Latvia also protects the negative freedom of expression, i.e. the right not to express an opinion,<sup>20</sup> 2) that freedom of expression is also related to expression by means of symbols,<sup>21</sup> 3) on distinction between showing loyalty to the state and showing loyalty to a particular ideology or political movement,<sup>22</sup> 4) on chilling effect of restrictions

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<sup>18</sup> On 5 April 1922 the proposal to adopt the second part of the Constitution that would have contained a human rights catalogue was defeated by a vote of 62 votes in favour, 5 against and 62 abstentions. Since the abstentions were counted as votes against, the second part was not adopted.

<sup>19</sup> Judgment of 2 July 2015, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-01-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-01-01_Spriedums_ENG.pdf).

<sup>20</sup> See para. 11.2.

<sup>21</sup> See para. 11.4.

<sup>22</sup> See para. 16.1.

placed on the freedom of expression,<sup>23</sup> and 5) the need to provide sufficient reasons for a decision to impose a penalty for exercise of freedom of expression.<sup>24</sup>

- Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?

Generally the only cases when there is a divergence between the case-law of the Constitutional Court and the case-law of European courts occur when the Constitution envisages a higher level of protection compared to international documents, *inter alia*, the ECHR. The Constitution, by its nature, cannot envisage a lower standard of protection of fundamental rights compared to international human rights instruments.<sup>25</sup> An opposite conclusion would be at odds with the concept of a state based on the rule of law, included in Article 1 of the Constitution, since one of the main manifestations of a state governed by the rule of law is the recognition of human rights and fundamental freedoms as the highest value for the state.<sup>26</sup> For example, the constitutional guarantees with regard to the right to a fair trial have frequently been found to be of a broader scope and extent compared to the guarantees of the ECHR.<sup>27</sup> Likewise, the Constitution also ensures more extensive protection of social rights than the ECHR and other international instruments.

Any competition that has arisen between various catalogues of human rights has been on the level of application of the respective catalogues, not on the level of the guarantees themselves.<sup>28</sup>

- Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)

There is no established procedure for choosing a particular catalogue of human rights in cases of overlapping guarantees. Nevertheless, as indicated above, in recent years the Constitutional Court has tended to apply primarily the fundamental rights catalogue of the Constitution, unless it has been demonstrated that another catalogue of human rights binding on Latvia provides for more extensive guarantees. This does not mean, however, that other sources of fundamental rights are never referred to – international law and in particular its interpretation by various international courts and other bodies continues to inform the interpretation of the Constitution of the Republic of Latvia.

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<sup>23</sup> See para. 16.7.

<sup>24</sup> *Ibidem*.

<sup>25</sup> See, for instance, judgment of 10 February 2017 in the case no. 2016-06-01, para. 29.2. Available in English: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/04/2016-06-01\\_Judgment\\_ENG.pdf](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/04/2016-06-01_Judgment_ENG.pdf)

<sup>26</sup> The judgment of 7 April 2009 in the case no. 2008-35-01, para. 18.8., available in English: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/09/2008-35\\_01\\_ENG.pdf](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2008/09/2008-35_01_ENG.pdf)

<sup>27</sup> See, for instance, the judgment of 15 March 2018 in the case no. 2017-16-01, no English translation available, and the judgment of 14 June 2018 in the case no. 2017-23-01, no English translation available.

<sup>28</sup> See, for instance, part II.V below.

## II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

### II.I Right to life

- What is the original wording of the provision protecting this right in your national catalogue?

Article 93 of the Constitution of the Republic of Latvia provides that „The right to life of everyone shall be protected by law“.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 116 of the Constitution of the Republic of Latvia does not list the right to life as one of the rights that may be restricted in a proportional manner in order to achieve a legitimate aim. Neither are any mechanisms for restricting this right contained in Article 93 itself. The phrase „shall be protected by law“ does not mean the same thing as „may be restricted by law“. This wording, which is only used in Article 93 of the Constitution, appears to refer to the positive obligation of the state to establish a legal framework (criminal law, etc.) that would provide adequate protection for the right to life.

The Constitutional Court has examined only one case concerning the right to life.<sup>29</sup> The judgment in this case contains an *obiter dictum* that “the right contained in Article 93 of the Constitution may be restricted only in the circumstances provided in Article 2[ § 2 of the ECHR]”.<sup>30</sup> In fact, some of the first drafts of what eventually became Article 93 of the Constitution did contain a second sentence that provided for the possibility of restricting the right to life in circumstances similar to those described in Article 2 § 2 of the ECHR but that sentence was eventually deleted.<sup>31</sup>

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

As indicated above, the right to life has been interpreted in only one judgment of the Court which concerned compensation for medication for persons suffering from the Gaucher disease. The interpretation provided by the Court is broadly similar to that given to Article 2 ECHR by the ECtHR. Thus, the Court indicated that the right to life is among the human rights with the highest value.<sup>32</sup> It also noted that “the right to life is a prerequisite for implementing all other fundamental human rights”.<sup>33</sup>

The main concern for the Constitutional Court was caused by the need to distinguish between the right to life and the right to health (the latter is protected by Article 111 of the Constitution). Taking into account this distinction – which does not exist in the ECHR – the Court came to the conclusion that the right guaranteed by Article 93 of the Constitution is not to be interpreted as having a

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<sup>29</sup> Judgment of 7 January 2010 in the case no. 2009-12-03. Not available in English.

<sup>30</sup> Para. 15.2.

<sup>31</sup> See Liholaja, V. (2011). *93. pants* [Article 93]. In Balodis, R. (Ed.), *Latvijas Republikas Satversmes komentāri: VIII nodaļa: civīlēja pamattiesības* [Commentary to the Constitution of the Republic of Latvia: Chapter VIII: Fundamental Rights] (pp. 165-182). Rīga: Latvijas Vēstnesis, p. 172.

<sup>32</sup> Para. 14.

<sup>33</sup> *Ibidem*.

broader scope that the obligations deriving from the ECHR.<sup>34</sup> Therefore it was held that the right to life is not restricted by means of the contested provision which pertained to financial assistance for purchasing medicines.<sup>35</sup>

As to the application of the right to life in the field of healthcare, the Court indicated that positive obligations for a state arise only if the threat to life is acute and specific.<sup>36</sup> Finally, the judgment includes a general thesis that “no human rights instruments guarantees a right to a person to live a life of specific length. The state has no obligation to ensure that everyone lives as long as is possible. No state is able to guarantee that”.<sup>37</sup>

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

There is no difference. The only case decided by the Constitutional Court of the Republic of Latvia is in line with the case-law of the ECtHR in comparable cases.

## II.II Freedom of expression

- What is the original wording of the provision protecting this right in your national catalogue?

Article 100 of the Constitution of the Republic of Latvia provides that „Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited“.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 116 of the Constitution of the Republic of Latvia provides, insofar as is relevant: „The rights of persons set out in Article 100 of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the state, and public safety, welfare and morals“.

It is to be noted that Article 116 of the Constitution does not contain any indication that restrictions of fundamental rights have to be proportionate. During the drafting of Article 116 a proposal was made to include a requirement that restrictions of fundamental rights have to be necessary in a democratic society but this proposal was voted down because of a misunderstanding about the meaning of the terminology.<sup>38</sup>

Nevertheless, the Constitutional Court has indicated that “arbitrary restrictions of the exercise of fundamental rights are not permissible. Fundamental rights may be restricted only in the circumstances provided for in the Constitution if they are necessary for the protection of important interests of the society and if the principle of proportionality is complied with”.<sup>39</sup> Hence the Constitutional Court has included the proportionality as one of the elements that has to be complied with when

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<sup>34</sup> Para. 15.2.

<sup>35</sup> Para 14.3.2.

<sup>36</sup> Para. 14.3.

<sup>37</sup> Para. 14.3.1.

<sup>38</sup> See Mits M. *European Convention on Human Rights in Latvia. Impact on Legal Doctrine and Application of Legal Norms*. Lund: Media Tryck, 2010, p. 164.

<sup>39</sup> Judgment of 11 April 2006 in the case no. 2005-24-01, para. 9, available in English:

[http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/10/2005-24-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/10/2005-24-01_Spriedums_ENG.pdf).



restricting fundamental rights, thus bringing the Constitution of the Republic of Latvia with the standards of international human rights instruments.

Therefore freedom of expression may be proportionally restricted in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has adopted judgments in six cases concerning Article 100 of the Constitution. What follows is some findings from those judgments that go beyond the traditional elements of the test used to assess the constitutionality of restrictions of freedom of expression.

Concerning the contents of the freedom of expression, the Constitutional Court has found that along the traditionally recognised elements it also includes the freedom of press,<sup>40</sup> the choice to display or not to display the national flag near a residential building,<sup>41</sup> and political speech, including in the context of election campaigns.<sup>42</sup> Freedom of expression also has a negative aspect, namely the right not to express an opinion.<sup>43</sup>

In the context of the freedom of the press, the Constitutional Court has indicated that media have an obligation to provide only truthful information.<sup>44</sup>

Concerning official secrets, the Court has indicated that the freedom to receive information means that a person ought to have a right to ascertain that information pertaining to this person has been classified as an official secret with a good reason. However, this does not mean a right to request access to official secrets generally.<sup>45</sup> Similarly, persons do not have an overarching right to access information in the possession of state institutions.<sup>46</sup>

The ECHR provides for more specific criteria for restricting the freedom of expression than does the Constitution. Therefore with regard to the permissibility of such restrictions the Constitution has to be interpreted in line with Article 10 of the ECHR.<sup>47</sup>

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

There is no notable difference between the case-law of the Constitutional Court of the Republic of Latvia and that of international courts.

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<sup>40</sup> Judgment of 5 June 2003 in the case no. 2003-02-0106, para. 1 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/01/2003-02-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/01/2003-02-0106_Spriedums_ENG.pdf).

<sup>41</sup> Judgment in the case no. 2015-01-01, cited above in footnote 19, para. 11.4.

<sup>42</sup> Judgment of 22 February 2010 in the case no. 2009-45-01, para. 9, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-45-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/07/2009-45-01_Spriedums_ENG.pdf).

<sup>43</sup> Judgment in the case no. 2015-01-01, cited above in footnote 19, para. 11.4.

<sup>44</sup> Judgment of 29 October 2003 in the case no. 2003-05-01, para. 31, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-05-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2003/02/2003-05-01_Spriedums_ENG.pdf).

<sup>45</sup> Judgment of 23 April 2003 in the case no. 2002-20-0103, para. 6 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/10/2002-20-0103\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/10/2002-20-0103_Spriedums_ENG.pdf).

<sup>46</sup> Judgment of 12 November 2015 in the case no. 2015-06-01, para. 11.1, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-06-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/01/2015-06-01_Spriedums_ENG.pdf).

<sup>47</sup> Judgment in the case no 2003-05-01, cited above in footnote 44, para. 22.

### II.III Right to privacy/right to respect for private life/right to private life

- What is the original wording of the provision protecting this right in your national catalogue?

Article 96 of the Constitution of the Republic of Latvia provides that „Everyone has the right to inviolability of his or her private life, home and correspondence“.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 116 of the Constitution of the Republic of Latvia provides, insofar as is relevant: „The rights of persons set out in Articl[e] ninety-six [...] of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.“

Taking into account the information indicated in part II.II above, the right to inviolability of a person’s private life may be proportionally restricted in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the state, and public safety, welfare and morals.

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has adopted judgments in fifteen cases concerning Article 96 of the Constitution. What follows is some findings from those judgments that go beyond the traditional elements of the test used to assess the constitutionality of restrictions of the right to inviolability of one’s private life.

A person’s name and surname form a part of their private life and therefore are protected by Article 96 of the Constitution.<sup>48</sup> The right to one’s own body, including the right to harm one’s own health by using tobacco, alcohol and narcotic substances falls within the scope of the right to inviolability of one’s private life and providing for criminal responsibility for such activities restricts this right.<sup>49</sup> Persons in custody do not enjoy the right to inviolability of their private life to the same extent as other persons.<sup>50</sup> The right to the inviolability of one’s private life includes the right to personal development by establishing and developing relationships with other persons, particularly in the emotional sphere.<sup>51</sup>

A rule on transcription of a person’s name pursuant to the rules of the Latvian language is to be seen as a restriction of the right to the inviolability of private life.<sup>52</sup>

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<sup>48</sup> Judgment of 21 December 2001 in the case no. 2001-04-0103, para. 1 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/06/2001-04-0103\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2001/06/2001-04-0103_Spriedums_ENG.pdf).

<sup>49</sup> Judgment of 26 January 2005 in the case no.2004-17-01, para. 10, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-17-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/07/2004-17-01_Spriedums_ENG.pdf).

<sup>50</sup> Judgment of 23 April 2009 in the case no.2008-42-01, para. 11.2, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/11/2008-42-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2008/11/2008-42-01_Spriedums_ENG.pdf).

<sup>51</sup> Judgment of 18 December 2009 in the case no.2009-10-01, para. 11, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/05/2009-10-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2009/05/2009-10-01_Spriedums_ENG.pdf).

<sup>52</sup> Judgment in the case no. 2001-04-0103, cited above in footnote 48, para. 2 of the motives.

The protection of the right of the inhabitants of Latvia to freely use the Latvian language in the entire territory of Latvia may be a legitimate aim for restricting a person's right to the inviolability of their private life.<sup>53</sup>

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

There is a certain difference between the case-law of the Constitutional Court and that of the UN Human Rights Committee. Specifically, in 2001 the Constitutional Court held<sup>54</sup> that the requirement that in Latvian passports personal names of foreign origin be transcribed pursuant to the rules of Latvian grammar complies with Article 96 of the Constitution. On 7 December 2004 the ECtHR declared an application from the same petitioner inadmissible as manifestly ill-founded,<sup>55</sup> ruling that the Latvian authorities, including the Constitutional Court have not overstepped the margin of appreciation. However, in 2010 the UN HRC adopted its views<sup>56</sup> with regard to an identical issue, finding „the State party's unilateral modification of the author's name on official documents [to be an] arbitrary interference with his privacy, in violation of article 17 of the [ICCPR]“.

#### II.IV Freedom of religion

- What is the original wording of the provision protecting this right in your national catalogue?

Article 99 of the Constitution of the Republic of Latvia provides: „Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State“.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 116 of the Constitution of the Republic of Latvia provides that „restrictions may [...] be imposed on the expression of religious beliefs“ and that this may be done „in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals“.

Taking into account the information indicated in part II.II above, the expression of religious beliefs may be proportionally restricted in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. The beliefs of a person (*forum internum*) may not be restricted in any way.

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court has adopted two judgments concerning Article 99 of the Constitution. In one of those judgments it held that a prohibition to keep Buddhist praying beads in a prison cell constitutes an interference with the expression of religious beliefs<sup>57</sup> and that the permission to keep items of a religious significance

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<sup>53</sup> Judgment in the case no. 2001-04-0103, cited above in footnote 48, para. 3 of the motives.

<sup>54</sup> Judgment in the case no. 2001-04-0103, cited above in footnote 48.

<sup>55</sup> Decision of the ECtHR of 7 December 2004 in the case *Mentzen v. Latvia*, application no. 71074/01.

<sup>56</sup> *Leonid Raihman v. Latvia*, Communication No. 1621/2007, U.N. Doc. CCPR/C/100/D/1621/2007 (2010).

<sup>57</sup> Judgment of 18 March 2011 in the case no. 2010-50-03, para. 9, available in English:

in a prison cells is to be granted on an individual basis, taking into account uniform criteria.<sup>58</sup>

In the second judgment the Constitutional Court found that association of religious organisations for the purposes of expressing religious beliefs falls within the scope of the freedom of religion and also within the scope of the freedom of association. The external expression of religious beliefs by a religious organisation are protected by both of these rights.<sup>59</sup> The state is not entitled to refuse to register as a religious union (a church) a religious community that identifies itself with a confession which already has another religious union (a church) registered in Latvia.<sup>60</sup> Within the context of the separation of church and state, the Constitutional Court has indicated that the state is entitled to delegate certain public duties to specific religious organisations.<sup>61</sup>

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

There is no notable difference between the case-law of the Constitutional Court of the Republic of Latvia and that of international courts.

## II.V Prohibition of discrimination

- What is the original wording of the provision protecting this right in your national catalogue?

Article 91 of the Constitution of the Republic of Latvia provides: „All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind“.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 91 is not listed in Article 116 of the Constitution as one of the rights that may be restricted in circumstances provided for by law in order to achieve a legitimate aim. Nevertheless, the Constitutional Court has frequently held that “the assumption that the constitutionally guaranteed rights of each specific person may not be restricted at all would be contrary to the fundamental rights of other persons guaranteed by other articles of the Constitution, to the rights of other persons to [the same constitutionally protected good] as well as with other provisions of the Constitution”.<sup>62</sup> Nevertheless, it would not be entirely accurate to speak about “restrictions” of the prohibition of discrimination because, depending on the situation, Article 91 of the Constitution either prohibits unequal treatment of persons in comparable conditions or else requires that such persons be treated differently. Hence, what is examined by the Court is the question of whether there

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[http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/07/2010-50-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2010/07/2010-50-03_Spriedums_ENG.pdf) .

<sup>58</sup> *Ibid.*, para. 15.

<sup>59</sup> Judgment of 26 April 2018 in the case no. 2017-18-01, para. 18, not available in English.

<sup>60</sup> *Ibid.*, para. 25.2.

<sup>61</sup> *Ibid.*, para. 27.

<sup>62</sup> See, for example, the judgment of 22 October 2002 in the case no. 2002-04-03, para. 2 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/04/2002-04-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2002/04/2002-04-03_Spriedums_ENG.pdf).

is an unequal treatment when there should have been equal treatment and *vice versa*. Once the existence of such an unequal (or equal) treatment has been established, only then does the Court proceed to examine the justification of such a divergence. As indicated below, unequal treatment may be found to be compatible with the first sentence of Article 91 of the Constitution if it has an objective and reasonable basis.

The Constitutional Court applied the following four-step test to assessing the compliance of legal provisions with the principle of equal treatment: 1) whether there are persons or groups of persons that are in equal and comparable circumstances; 2) whether the contested legal provision provides for a different treatment of these persons (or groups of persons); 3) whether it is prescribed by law,<sup>63</sup> and 4) whether the different treatment has an objective and reasonable basis, that is, whether it has a legitimate aim and is proportionate.<sup>64</sup>

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

Article 91 is the second most “popular” article of the Constitution in the case-law of the Constitutional Court and it has been invoked in 109 of the Court’s 325 judgments. However, the cases where the prohibition of discrimination guaranteed by the second sentence of Article 91 of the Constitution has been examined are far less numerous. Therefore this section will, first, briefly examine the criteria used by the Constitutional Court of the Republic of Latvia in order to differentiate between equality before law and non-discrimination and, second, will indicate some of the more important findings that the Court has included in its case-law concerning the scope of the prohibition of discrimination.

Article 91 of the Constitution contains two mutually closely connected principles: the principle of equality and the principle of the prohibition of discrimination.<sup>65</sup>

The principle of equality permits and even requires a different treatment of persons in different circumstances as well as permits a different treatment of persons in equal circumstances if such a different treatment has an objective and reasonable basis.<sup>66</sup> The principle of the prohibition of discrimination adds to the principle of equality and helps to apply it in specific situations.<sup>67</sup>

The aim of the prohibition of discrimination included in the second sentence of Article 91 of the Constitution is to eliminate unequal treatment that is based on

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<sup>63</sup> The first time the Constitutional Court examined the issue of whether the different treatment is provided by law was in the judgment of 2 March 2016 in the case no. 2015-11-03, para. 20, available in English: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/04/2015-11-03\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/04/2015-11-03_Spriedums_ENG.pdf). Since then the Constitutional Court has used this additional element consistently.

<sup>64</sup> See, for example, the judgment of 16 May 2019 in the case no. 2018-21-01, para. 13.3, not available in English.

<sup>65</sup> Judgment of 14 September 2005 in the case no. 2005-02-0106, para. 9.3, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/02/2005-02-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2005/02/2005-02-0106_Spriedums_ENG.pdf).

<sup>66</sup> Judgment of 13 May 2005 in the case no. 2004-18-0106, para. 13 of the motives, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf).

<sup>67</sup> Judgment of 23 November 2015 in the case no. 2015-10-01, para. 15, available in English: [http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/04/2015-10-01\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/wp-content/uploads/2015/04/2015-10-01_Spriedums_ENG.pdf).

impermissible grounds.<sup>68</sup> In order to conclude that the prohibition of discrimination has been violated, it is necessary to establish that all-embracing application of the principle of equality principle is restricted by a criterion, the use of which is at variance with the fundamental idea of a democratic state governed by the rule of law, as well as with the aims and ideals prevalent in a contemporary civic society, and that the use of such a criterion by the state has not been duly justified. Such a restriction ought to be considered as impermissible, arbitrary or unjustified. The criteria which form the scope of the second sentence of Article 91 of the Constitution are various. Namely, the justifiability of the use of such criteria may differ when taking into consideration the specifics of each criterion and the actual circumstances of the case under review. There are also criteria on the basis of which an unequal treatment may not be permitted. Therefore such criteria may not be used. For instance, social origin, belonging to a certain race or world view may be regarded as such criteria.<sup>69</sup> A person's citizenship must be regarded as a criterion on the basis of which discrimination is prohibited. However, different treatment on the basis of this criterion is not absolutely prohibited – in certain circumstances the application of this criterion may be considered to be justified.<sup>70</sup>

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

There are no major differences with respect to methodology. There have been different conclusions reached by the Constitutional Court and the European Court of Human Rights in one notable case concerning the prohibition of discrimination, namely, the Grand Chamber of the ECtHR in “*Andrejeva v. Latvia*”<sup>71</sup> disagreed with the ruling of the Constitutional Court of 26 June 2001 in the case no. 2001-02-0106.<sup>72</sup> However, it has to be emphasised<sup>73</sup> that any difference in the case law is not because of a different understanding of the scope of the prohibition of discrimination or even because of differences of methodology but rather because of the application of the exact same principles in exactly the same manner to the facts of a specific case in a different way. The context that is taken into account when deciding a particular case does not change because of the national or international nature of the court in question but rather because of other circumstances.

## II.VI Right to liberty

- What is the original wording of the provision protecting this right in your national catalogue?

Article 94 of the Constitution of the Republic of Latvia provides: „Everyone has the right to liberty and security of person. No one may be deprived of or have their liberty restricted, otherwise than in accordance with law“.

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<sup>68</sup> Judgment of 9 June 2015 in the case no. 2017-28-0306, para. 9, not available in English.

<sup>69</sup> Judgment in the case no. 2005-02-0106, cited above in footnote 65, para. 9.2.

<sup>70</sup> Judgment of 9 June 2015 in the case no. 2017-28-0306, para. 10.1, not available in English.

<sup>71</sup> Judgment of 18 February 2009, application no. 55707/00.

<sup>72</sup> Available in English: [http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2001/02/2001-02-0106\\_Spriedums\\_ENG.pdf](http://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2001/02/2001-02-0106_Spriedums_ENG.pdf)

<sup>73</sup> And it has been emphasised. See, for instance, the partly dissenting opinion of Judge Ziemele in “*Andrejeva v. Latvia*”.

- Is it possible to restrict the right? If so, how and under what conditions?

Article 116 of the Constitution of the Republic of Latvia does not list the right to liberty as one of the rights that may be restricted in a proportional manner in order to achieve a legitimate aim. However, the wording of Article 94 itself contains a provision that this right may be restricted in accordance with law. Legal doctrine<sup>74</sup> suggests that “in accordance with law” ought to be read to incorporate the safeguards against arbitrary deprivation of liberty contained in Article 5 of the Convention. Such a reading would appear to be consistent with the case-law of the Constitutional Court with respect to other fundamental rights as well as with Article 89 of the Constitution.

- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

During 21 years of the existence of the fundamental rights catalogue in the Constitution of the Republic of Latvia the Constitutional Court has not examined the merits of a single case concerning Article 94 of the Constitution. One case<sup>75</sup> that had been initiated was later discontinued because it pertained to application of a legal provision and not a legal provision itself, while another one<sup>76</sup> was discontinued when the Parliament conceded that the contested provisions of the Code of Criminal Procedure were indeed contrary to Article 94 and amended the contested provisions.

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

Not applicable.

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<sup>74</sup> Pāparinskis, M. (2011). *94. pants* [Article 94]. In Balodis, R. (Ed.), *Latvijas Republikas Satversmes komentāri: VIII nodaļa: cilvēka pamattiesības* [Commentary to the Constitution of the Republic of Latvia: Chapter VIII: Fundamental Rights] (pp. 183-204). Rīga: Latvijas Vēstnesis, p. 204.

<sup>75</sup> Decision to discontinue proceedings of 1 December 2004 in the case no. 2004-05-01, not available in English.

<sup>76</sup> Decision to discontinue proceedings of 15 February 2005 in the case no. 2004-23-01, not available in English.