S U P R E M E C O U R T

CONSTITUTIONAL REVIEW CHAMBER

JUDGMENT
in the name of the Republic of Estonia

Case number	5-24-28
Date of judgment	22 January 2025
Judicial panel	Chair Villu Kõve, members Saale Laos, Ivo Pilving, Nele Siitam and Urmas Volens
Case	Review of the constitutionality of § 100^{1} subsection (1^{1}), § 100^{10} subsection (1), § 100^{13} subsection (2) and § 100^{18} of the Aliens Act
Basis for proceedings	Tartu Administrative Court order of 17 September 2024 in case No 3-24-2215
Participants in the proceedings	Marina Tverdokhlebova Police and Border Guard Board Riigikogu Chancellor of Justice Minister of Justice and Digital Affairs Government of the Republic Minister of the Interior
Manner of examination	Written procedure

OPERATIVE PART

1. To declare § 100^{1}(1^{1}), § 100^{10}(1), § 100^{13}(2) and § 100^{18} of the Aliens Act unconstitutional and invalid to the extent that they preclude filing a complaint with an administrative court for issuance of a visa in a situation where the applicant was in Estonia during the visa proceedings.

2. To order that the Republic of Estonia pay compensation for procedural expenses in the amount of 411 euros and 77 cents in favour of Marina Tverdokhlebova.

FACTS AND COURSE OF PROCEEDINGS

1. On 12 June 2024, Marina Tverdokhlebova (the applicant), a citizen of the Russian Federation, submitted an application at a service bureau of the Police and Border Guard Board (PBGB) for a long-stay visa while staying in the Republic of Estonia on the basis of a long-stay D visa, which had been issued with a validity period until 30 June 2024. The applicant also holds a C-visa valid from 13 June

2022 to 12 June 2027. After applying for a long-stay visa, the applicant has stayed in Estonia as follows: she left Estonia on 7 July 2024, arrived in Estonia on 3 August 2024, left Estonia on 17 August 2024, arrived in Estonia on 1 November 2024, and left Estonia on 12 November 2024.

2. According to the visa application, the purpose of the trip was to visit relatives and friends, the person to be visited was indicated as the applicant's mother, Lidia Koptilkina, who was also the person who filled out the sponsor's questionnaire. According to the questionnaire, L. Koptilkina invited the applicant to stay with her because due to her advanced age and permanent deterioration in health she was staying in a care home and wished to communicate directly with the applicant.

3. By decision of 25 June 2024, the PBGB refused to issue a visa to the applicant because there are "reasonable grounds to doubt the authenticity of the additional documents submitted or the accuracy of their content, the reliability of her statements or her intention to leave the Republic of Estonia before the expiry of the long-stay visa". The decision also states that "at least one of the conditions required for the issuance of a visa is not met".

4. On 29 July 2024, the applicant filed a complaint with Tartu Administrative Court for annulment of the PBGB decision and for the PBGB to be obliged to re-consider the matter. The complaint contains a request to set aside and declare unconstitutional § 100^{18} in conjunction with § 100^{10}(1) and § 100^{13}(2) of the Aliens Act to the extent that they preclude filing a complaint with an administrative court against refusal to issue a visa. The restriction of the fundamental right laid down in § 15(1) of the Constitution arising from the contested norms is disproportionate and a person must be ensured judicial protection of their rights. The applicant referred to Supreme Court Constitutional Review Chamber judgment No 5-20-10/13 of 20 April 2021.

5. By order of 17 September 2024, the Tartu Administrative Court accepted the complaint for proceedings in case No 3-24-2215 (para. 2 of the operative part of the order). Pursuant to para. 1 of the order, the Administrative Court set aside and declared unconstitutional § $100^{1}(1^{1})$, § 100^{10}(1), § 100^{13}(2) and § 100^{18} of the Aliens Act to the extent that they preclude filing a complaint with an administrative court to contest refusal to issue a long-stay visa. The court referred the order to the Supreme Court for initiating constitutional review proceedings.

6. Sections 100^{1}–100^{19} of the Aliens Act establish a special internal administrative procedure for contesting a decision to refuse a long-stay visa. A foreigner may apply to the PBGB for re-examination of the decision to refuse to issue a visa. In the event of a negative decision, an application may be submitted to the Ministry of the Interior for a second review of the decision. Section 100^{18} of the Aliens Act stipulates that no new application may be submitted or a complaint filed with the administrative court against a decision made on the basis of an application.

7. In conjunction, the above-mentioned norms preclude the applicant from having recourse to an administrative court. By judgment No 5-20-10/13, the Supreme Court declared § 100^{10}(1), § 100^{13}(2) and § 100^{18} of the Aliens Act unconstitutional to the extent that they precluded filing a complaint with an administrative court to contest premature termination of the period of stay. The main arguments of the Supreme Court are also applicable to contesting refusal to issue a long-stay visa.

8. The prohibition on recourse to the court arises directly from § 100^{18} of the Aliens Act. The legislator has established a two-stage internal administrative contestation procedure set out in §§ 100^{1}–100^{19} of the Aliens Act with the aim of ensuring that, in the event of refusal to issue a visa, applicants have the opportunity to obtain legal protection without the existence of a right of judicial appeal. Therefore,

these norms must also be considered relevant to adjudication of the case (Supreme Court Constitutional Review Chamber judgment of 8 November 2017, 5-17-9/8, para. 22).

9. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas does not regulate the long-stay visa laid down in § 60 of the Aliens Act and contestation of administrative decisions relating thereto. Nor do the provisions concerning issuance and refusal of a long-stay visa arise from other EU legal acts either. Issuance of a long-stay visa falls within the competence of a Member State, which is why it is not possible to apply EU law directly and thus affirm the applicant's right of appeal in contesting refusal to issue a long-stay visa (Article 19(1) TEU, Article 51(1) of the Charter of Fundamental Rights of the EU).

10. It is not permissible to give a provision which is clear, unambiguous and accurately expresses the will of the legislator a completely opposite meaning by using the constitutionally-conforming method of interpretation. In the present case, recognising the right of appeal by means of the constitutionally-conforming interpretation would mean that the legislator's clear intention reflected in the provisions would acquire the opposite meaning.

11. Section 15(1) of the Constitution gives rise to everyone's right of recourse to the courts if their rights and freedoms have been violated. It can also be relied on by a person who is not staying in the Republic of Estonia at the time of applying for a long-stay visa. Any unfavourable influence on the right of recourse to the court constitutes interference with the substantive scope of protection of the fundamental right enshrined in § 15(1) of the Constitution. If a person enjoys a substantive right which may have been violated, but due to limitations laid down by procedural law the person cannot have recourse to the court, then undoubtedly interference with the scope of protection of the fundamental right enshrined in § 15(1) of the Constitution has been interfered with (Supreme Court Constitutional Review Chamber judgment of 20 April 2021, 5-20-10/13, paras 45–46). The scope of protection of the applicant's right of judicial appeal has been interfered with.

12. The right of judicial appeal arising from § 15(1) of the Constitution is a fundamental right not subject to statutory reservation and only other fundamental rights or constitutional values can be taken into account as justification for its limitation. Public order, national security and judicial procedural economy are constitutional values for the purpose of the guaranteeing of which interference with a person's right of judicial appeal is not, in principle, precluded.

13. Complete preclusion of the right of access to the court constitutes serious interference with a person's rights. Public order and national security can be ensured by using means that are less intrusive of a person's fundamental rights. An applicant who is an alien can participate in administrative court proceedings without the need to stay permanently in Estonia during the court proceedings. In this case, too, the applicant has a representative through whom she participates in the court proceedings. Recognition of the right of judicial appeal does not bring about the negative consequences described when establishing the restriction. Similarly to the restriction imposed on contesting a decision to prematurely terminate a period of stay, the severe restriction imposed on contesting a decision to refuse a long-stay visa cannot be justified by the need to save the state's financial resources. Furthermore, it is not justified to protect the fundamental rights of, for example, an applicant for a short-stay visa or a person staying in the country on the basis of the right of stay better than the rights of an applicant for a long-stay visa, allowing one to have recourse to the court to protect their rights and the other not. The restriction is not proportionate and is in conflict with the Constitution.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

[…]

PROVISIONS DECLARED UNCONSTITUTIONAL

46. Sections 100^1, 100^{10}, 100^{13} and 100^{18} of the Aliens Act stipulate, inter alia:
"§ 100^1. Contestation of a decision on refusal to issue a visa, annulment of a visa, revocation of a visa, refusal to extend period of stay and premature termination of period of stay
[…]
(1^1) An alien may submit an application for review of a decision (hereinafter in this Division an *application*) within 30 days as of the date of notification of the decision.
[…]
§ 100^{10}. Appeal against decision made in course of contestation
(1) An alien may file an application against a decision made in the course of contesting a decision on refusal to issue a visa, annulment of a visa, revocation of a visa, refusal to extend the period of stay and premature termination of the period of stay for the second review of the decision on refusal to issue a visa, annulment of a visa, revocation of a visa, refusal to extend the period of stay and premature termination of the period of stay (hereinafter in this Division an *application*) within 30 days as of the date of notification of the decision made on the basis of the application specified in § 100^1 of this Act.
[…]
§ 100^{13}. Place of lodging appeal
[…]
(2) If a decision on refusal to issue a visa, annulment of a visa, revocation of a visa, refusal to extend the period of stay or premature termination of the period of stay has been made by the Police and Border Guard Board or the Estonian Internal Security Service, an application shall be filed with the Ministry of the Interior.
[…]
§ 100^{18}. Contestation of a decision made on basis of an application

A new appeal or action cannot be filed with the administrative court against a decision made on the basis of an application."

47. By judgment of 20 April 2021 No 5-20-10/13, the Supreme Court declared § 100^{10}(1), § 100^{13}(2) and § 100^{18} of the Aliens Act unconstitutional and invalid to the extent that they precluded filing a complaint with an administrative court to contest premature termination of the period of stay.

OPINION OF THE CHAMBER

48. The Chamber will first assess the relevance of the norms declared unconstitutional and set aside by the Administrative Court order (I) and explain their connection with international and EU law (II). Next, the Chamber will analyse the substantive and personal scope of protection of the fundamental right of access to court (III), and will finally assess the constitutionality of the relevant norms (IV).

I

49. When resolving a case based on an application by a court of first or second instance (specific constitutional review proceedings), the Supreme Court may invalidate or declare unconstitutional a

legislative act or a provision thereof, as well as failure to issue a legislative act which was relevant to adjudicating the case (§ 9(1) and § 14(2) (first sentence) Constitutional Review Court Procedure Act). In line with Supreme Court case-law, in the frame of specific constitutional review a provision is deemed relevant if it is of decisive importance for resolving the case, i.e. if in the event of its unconstitutionality the court should decide differently than if it were constitutional (see Supreme Court *en banc* judgment of 28 October 2002, 3-4-1-5-02, para. 15; 15 March 2022, 5-19-29/38, para. 49).

50. In the administrative case that gave rise to the present constitutional review case, a complaint was filed for annulling a decision refusing to issue a long-term visa and for the PBGB to be obliged to re-consider the matter. The provisions of the Aliens Act in question have been relevant before as well (see paragraph 47 above). Compared to constitutional review case No 5-20-10, in the present case the Administrative Court has also declared §$100^{1}(1^{1})$ of the Aliens Act unconstitutional. This subsection regulates contestation of a decision to refuse a long-stay visa before the administrative body that made the decision and does not in itself give rise to a restriction on the applicant's right of recourse to the court. At the same time, this provision is also closely linked to § 100^{18} of the Aliens Act and forms a conceptual whole with other provisions set aside by the Administrative Court (cf. 5-20-10/13 cited above, para. 30).

51. The Chamber maintains the reasoning set out in paragraphs 23–33 of the above-mentioned judgment, and § $100^{1}(1^{1})$, § $100^{10}(1)$, § $100^{13}(2)$ and § 100^{18} of the Aliens Act must be deemed to be relevant provisions for adjudicating the present case.

52. Under § 9(1) of the Constitutional Review Court Procedure Act (CRCPA), a court of first or second instance may initiate constitutional review proceedings if it has set aside the relevant legislative act when adjudicating a case. Adjudication of a court case includes resolution of both the merits of the case and procedural issues related to the case (Supreme Court Constitutional Review Chamber judgment of 20 November 2014, 3-4-1-46-14, para. 18). In the present case, the Administrative Court issued an order accepting the complaint for proceedings. The disputed norms precluded such a decision. It is true that § 121(2) clause 1 of the Code of Administrative Court Procedure in conjunction with § 44(1) also allows for a complaint to be returned if it is obvious that none of the applicant's rights have been interfered with by the administrative act. However, no such situation has been established by the Administrative Court, nor would there have been any basis for doing so until the special provisions of the Aliens Act had to be applied. In addition, the Chamber notes that although the death of the applicant's mother (see para. 44 above) may be relevant to adjudicating the merits of the mandamus complaint, it did not affect the issue of admissibility of the complaint filed with the Administrative Court, because the right of appeal is assessed as at the time of filing the complaint (Supreme Court Administrative Law Chamber order of 13 February 2023, 3-21-1360/15, para. 12.1).

II

53. The review of constitutionality of norms falling within the scope of application of EU law must not harm the primacy, uniformity or effectiveness of EU law (Supreme Court *en banc* judgment of 15 March 2022, 5-19-29/38, para. 43). Under Article 19(1) (second sentence) of the EU Treaty, Member States have to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. Under Article 47(1) of the EU Charter of Fundamental Rights, everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal. Under Article 51(1) (first sentence) of the EU Charter of Fundamental Rights, the provisions of the Charter are addressed to the Member States only when they are implementing Union

law. The Administrative Court has rightly noted in paragraph 10.1 of the order that the provisions concerning issuance or refusal of a long-stay visa do not arise from the Visa Code or other EU legal acts.

54. In line with Article 32(3) (first sentence) of the Visa Code, applicants who have been refused a visa have the right to appeal. The Court of Justice of the EU has interpreted Article 32(3) of the Visa Code, read in the light of Article 47 of the Charter, as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal (judgment of the Court of Justice of the EU of 13 December 2017, No C-403/16, *Soufiane El Hassani*, para. 42). In its current version, Article 1(1) of the Visa Code establishes the procedures and conditions for issuing visas for intended stays in the territory of the Member States not exceeding three months in any six-month period. Under § 60(3) of the Aliens Act, a long-stay visa may be issued for a period of stay of up to 365 days within twelve consecutive months unless otherwise provided for by treaty. So, the Visa Code does not extend to long-stay visas issued pursuant to § 60 of the Aliens Act.

55. To a certain extent, the issuance of long-stay visas is regulated by Directive 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, as well as Regulation No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa. At the same time, the possibility to issue a long-stay visa for the purpose indicated in the applicant's application does not fall within the scope of either of these EU legal acts.

56. Under EU law, a Member State must guarantee the right of judicial appeal where EU law establishes the possibility of issuing a long-stay visa to a foreign national (judgment of the Court of Justice of the EU of 10 March 2021, No C-949/19, *M. A*., para. 48). In case No 5-20-10, the relevant EU law did not consist of the provisions of the Visa Code, but the activities of the PBGB interfered with the applicants' right to visa-free stay arising from the provisions of Regulation No 2018/1806 of the European Parliament and of the Council of 14 November 2018, listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

57. The applicant applied for a long-stay visa whose issuance is not regulated by EU law. Unlike in case No 5-20-10, the PBGB decision to refuse to issue a long-stay visa does not affect the applicant's right of stay that she had previously. Thus, the right of judicial appeal arising from Article 47(1) of the Charter of Fundamental Rights of the European Union does not apply to the procedure for issuing a long-stay visa. This is not a short-stay visa procedure, nor does the applicant have a right of stay directly arising from EU law whose violation could be reviewed by a court.

58. Nor does Article 6(1) of the ECHR establish a separate right to demand judicial review of the admission of aliens. Nor can the relevant right arise from Article 13 of the ECHR (see ECtHR decision of 5 March 2020, No 3599/18, *M. N. and Others v. Belgium*, paras 129 and 137).

III

59. According to the first sentence of § 15 of the Constitution, everyone whose rights and freedoms

have been violated has the right of recourse to the courts. In case-law, § 14 of the Constitution has also been referred to as the source of that right (Supreme Court *en banc* order of 5 June 2017, 3-1-1-62-16, para. 31; cited 5-20-10/13, para. 45). In addition to fundamental rights, the first sentence of § 15(1) of the Constitution also covers, inter alia, the rights provided for in international agreements, EU law, and Estonian laws and other legislation. In the first sentence of § 15(1) of the Constitution, the protected right refers to legal positions protecting the interests of individuals, on the basis of which they can demand that the obligated subject take action or refrain from action.

60. When interpreting an allegedly violated law or other legislative act, the court must assess whether the provision contained therein protects only the public interest or also the interests of an individual. If the provision protects the interests of an individual in addition to public interests, the provision gives rise to the subjective right of individuals to demand compliance with the provision (e.g. Supreme Court Special Panel judgment of 20 December 2001, 3-3-1-15-01, para. 22). Section 15(1) of the Constitution does not give rise to a legally independently protected status, but reliance on it presupposes interference with a person's other subjective right.

61. The Aliens Act (including the conditions for issuing a visa) and other Estonian legislation do not create a subjective right to a visa for an alien. At the same time, refusal to issue a visa may interfere with rights arising from other legislation, including fundamental rights.

62. As mentioned above, the substantive scope of protection of § 15(1) of the Constitution extends primarily to substantive rights, including the fundamental right to family (§ 27 Constitution) and the inviolability of family and private life (§ 26 Constitution). The applicant's visa application was accompanied by an invitation from her mother, in which she wished to be with her daughter due to her deteriorating health. The applicant's mother died on 1 August 2024 and succession proceedings have also taken place by the time of this judgment. Thus, interference with the applicant's fundamental rights related to family and private life as a result of the decision to refuse to issue a visa to her in June 2024 was at least possible at the time of recourse to the court. The Administrative Court must determine more specific circumstances concerning the right of appeal and the admissibility of the complaint when resolving the complaint on the merits (cf. § 121(2) clause 1 Code of Administrative Court Procedure).

63. Under § 9(1) of the Constitution, the rights, freedoms and duties of everyone and each person, as set out in the Constitution, are equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.

64. The text of § 9 of the Constitution expressly considers the stay in Estonia to be important, so that it is not a random circumstance, as the Administrative Court found. Furthermore, the fact of being in the country is sufficiently verifiable. At the same time, the Chamber considers it necessary to specify that paragraph 45 of the judgment in case No 5-20-10 only implies that an alien who is not staying in Estonia has the right of recourse to the court under § 15(1) of the Constitution if such a right has arisen due to their previous stay in Estonia. This does not mean that any foreigner who is not staying in Estonia has the same right.

65. In the present case, it has been established that the applicant was in Estonia on 12 June 2024 when she personally applied for a long-stay visa at the PBGB office. Submission of the application initiated visa proceedings in respect of the applicant, in which the applicant's subjective rights may have been at stake (see para. 62 above). This also brought the applicant within the scope of §§ 14 and 15 of the Constitution. In such a situation, an alien who was in Estonia during the visa proceedings does not lose the constitutional right under § 9(1) of the Constitution to have recourse

to the court in the matter of visa proceedings if they later leave Estonia. Thus, in the present case, the applicant falls within the personal scope of protection of § 15(1) of the Constitution.

IV

66. The current wording of the contested provisions excludes the right of appeal regardless of whether refusal of a visa may interfere with the right of a person who was in Estonia during the visa proceedings. If guided by current law, the court would have no reason to examine the substantive violation.

67. The right of judicial appeal arising from § 15(1) of the Constitution is a fundamental right not subject to statutory reservation whose limitation can only be justified by other fundamental rights or constitutional values, and interference must be proportionate in terms of achieving its purpose, i.e. a measure which is appropriate, necessary and proportionate in the narrow sense (see e.g. Supreme Court *en banc* judgment of 16 May 2008, 3-1-1-88-07, para. 43). In response to the opinion of the Chancellor of Justice, the Chamber notes that the second sentence of § 130 of the Constitution does not imply an absolute prohibition on restricting the fundamental rights referred to in this provision, including the right of recourse to the court. The second sentence of § 130 of the Constitution only prohibits imposing additional restrictions on certain rights during a state of emergency or a state of war which would not be considered at any other time. Restrictions on the right of recourse to the court, e.g. state fees, time-limits for appeal, and the like, which are constitutional in a normal situation, are also applicable during a state of emergency and a state of war. Both in normal circumstances and during a state of emergency or state of war, the second sentence of § 11 and the second sentence of § 130 of the Constitution, taken together, prohibit distorting the essence of the right of access to a court, i.e. undermining its core. A situation where, in the event of serious interference with fundamental rights, judicial protection is completely excluded can be considered to be undermining the core of the right of recourse to the court.

68. Page 6 of the explanatory memorandum to the first reading of the Draft Act 901 SE justifies exclusion of the right of access to the court under § 100^{18} of the Aliens Act with the need to protect public order and national security and reduce the workload of the courts and costs of judicial proceedings. It was found that if the right of recourse to the court is granted then an applicant who is an alien must be ensured the possibility to be present at the hearing of their court case and thus stay in Estonia until the end of the judicial proceedings. In view of the consequences which may result from the arrival and stay in Estonia of an undesirable alien as well as the duration and cost of judicial proceedings, it was found not to be appropriate or necessary to enable judicial review of visa proceedings.

69. Public order, national security and judicial procedural economy are constitutional values for the purpose of guaranteeing of which it is in principle possible to interfere with a person's right of judicial appeal (see also cited 5-20-10/13, para. 53). Exclusion of a court dispute over the lawfulness of a decision refusing to issue a long-stay visa is not a manifestly inappropriate means of ensuring public order and national security. Restriction of the right of judicial appeal will also undoubtedly enable the state to save money. The restriction is also necessary because other measures that are less intrusive of the fundamental right of access to a court are not equally effective in achieving the same objective.

70. However, the restriction in question is not proportionate in the narrow sense. No compelling need exists to completely exclude a person's fundamental right of access to a court, because other means that are less intrusive of the person's fundamental right of access to a court guarantee sufficient protection of the constitutional values sought by the relevant norms.

71. The Minister of Justice and Digital Affairs pointed out that if, in the event of every refusal to issue a visa, an alien who is not staying in Estonia would have a potential basis for entering Estonia arising from § 15 of the Constitution in order to exercise the right to be present at the hearing of their court case (§ 24(2) Constitution), then the decision to issue a visa may prove to be meaningless – the alien would arrive in Estonia regardless of the substantive visa decision. The Chamber emphasises that the right to enter Estonia is actually only potential. The applicant does not necessarily have to be in Estonia during the court proceedings. Under the law, a visa may be refused to a person who poses a threat to public order or national security if, in a specific case, the threat outweighs the right to be present at the court hearing. If necessary, the court may allow an alien to stay in Estonia for a limited period by way of interim legal protection.

72. As a rule, an applicant who is an alien is guaranteed a sufficient opportunity to participate in administrative court proceedings even without the need to stay permanently in Estonia during the court proceedings. If existing opportunities for participating in court proceedings remotely or through a representative are not sufficient, the legislator may consider extending them in visa disputes instead of completely excluding the right of recourse to the court (cited 5-20-10/13, paras 56–57). Appropriate procedural restrictions can be applied to disclosure of information with restricted access in visa matters (see § 88 Code of Administrative Court Procedure).

73. Complete exclusion of the right of recourse to the court in a situation where a person's fundamental right might be interfered with constitutes a serious interference with a person's right of judicial appeal, which requires extremely compelling reasons. Economy of court proceedings is certainly an important value, but such an intense restriction of the applicants' right of judicial appeal cannot be justified solely by the need to save state money (cited 5-20-10/13, para. 58).

74. However, § 12 of the Constitution has not been interfered with because the relevant provisions of the Aliens Act do not regulate the rights of an applicant for a long-stay visa differently compared to the rights of an applicant for a short-stay visa or a person staying in the country on the basis of the right of stay. The difference in the scope of application of § 15 of the Constitution is due to EU law, not the activities of the Estonian legislator. The fact that EU law gives persons within its scope the right of recourse to the court does not imply that Estonian law must also guarantee an equivalent right to persons applying for a long-stay visa on conditions that do not fall within the scope of EU law.

75. In the present case, no reason exists to declare the relevant provisions of the Aliens Act unconstitutional and invalid narrowly to the extent of the features that characterise the applicant's situation (see Supreme Court *en banc* judgment of 11 June 2019, 5-18-8/19, para. 72). Restriction of judicial review is unconstitutional regardless of whether refusal to issue an airport transit visa, a short-stay visa or a long-stay visa (§ 57 Aliens Act) is contested, if the person has stayed in Estonia during the visa proceedings.

76. For these reasons, limitation of the fundamental right under § 15(1) of the Constitution resulting from the contested norms is disproportionate in terms of achieving its objectives and contrary to the Constitution. On the basis of § 15(1) clause 2 of the CRCPA, the Chamber satisfies the application by Tartu Administrative Court and declares § $100^{1}(1^{1})$, § $100^{10}(1)$, § $100^{13}(2)$ and § 100^{18} of the Aliens Act unconstitutional and invalid to the extent that they preclude filing a complaint with the administrative court for issuance of a visa in a situation where the applicant was in Estonia during the visa proceedings.

77. The applicant requests reimbursement of legal aid expenses in the amount of 411 euros and 77 cents. The applicant was provided with legal aid (examination of letters from the Supreme Court and the positions of other participants in the proceedings, and preparation of an opinion and list of procedural expenses) for 3.75 hours. Under § 63(1) of the CRCPA, the necessary and justified legal expenses of a participant in proceedings mentioned in § 10(1) clause 3 of the CRCPA are reimbursed in specific constitutional review proceedings (Supreme Court Constitutional Review Chamber order of 9 April 2020, 5-18-5/33, para. 16). In the opinion of the Chamber, the procedural expenses are necessary and justified and the Republic of Estonia must be ordered to pay them in favour of the applicant (§ 63(1) CRCPA).

(signed digitally)