

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence <div>- Linked to the Article 5 of the Directive 2004/38.</div> <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30.03.2015.
Deciding body (in original language)	Rīgas apgabaltiesas Kriminālietu tiesu kolēģija
Deciding body (in English)	Division of Criminal Cases of Riga Regional court
Case number (also European Case Law Identifier (ECLI) where applicable)	No.133030314 (archive No. 104AA-0254-15/24)
Parties	Institution which has drawn up the administrative violation report – State Border Guard (Valsts robežsardze) The defendant – Joint Stock Company “Air Baltic” (A/S “Air Baltic”)
Web link to the decision (if available)	Not available.
Legal basis in national law of the rights under dispute	Immigration Law, (Imigrācijas likums) entered into force 01.05.2003. Latvian Administrative Violations Code, entered into force 01.07.1985 (Latvijas Administratīvo pārkāpumu kodekss). Cabinet Regulation No. 675, adopted 30 August 2011 “Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members”/ Ministru Kabineta 2011.gada 30.augusta noteikumi Nr.675 “Kārtība, kādā Savienības pilsoņi un viņu ģimenes locekļi ieceļo un uzturas Latvijas Republikā”.

Key facts of the case

(max. 500 chars)

On 27 December 2013 an official of State Border Guard drew up an administrative violation report that JSC "Air Baltic" on 26 December 2013 with flight BT-423 Moscow-Riga brought a citizen of Russian Federation, without a valid visa or residence permit, which would permit entry to the territory of Latvia. The validity date of the person's visa was to start only on 29 December 2013, but the person crossed the border on 27 December 2013, which means the person had no right to cross the border yet and enter into the territory of Latvia. The person was escorted by the grandmother, a citizen of Netherlands. Taking into account that the person had already been unlawfully brought to the country and was a minor, the State Border Guard authorized the person to enter the Republic of Latvia by issuing a Schengen visa at the border.

According to the report JSC "Air Baltic" had violated Article 21, first paragraph of Immigration Law which determines that a carrier shall ascertain that the foreigner it is carrying has the necessary documents for entry into the Republic of Latvia. JSC "Air Baltic" received an administrative fine in the amount of EUR 2 500.

JSC "Air Baltic" lodged a complaint in Riga district court. The complaint was rejected.

The court rejected JSC "Air Baltic" objections that they could bring in the person because the visa was valid but its expiry date had not yet begun.

The court after the examination of the case documents concluded that there is no proof that the citizen of Russian Federation, who travelled without a visa would be a family member or a relative of EU citizen, thus according to the Directive 2004/38/EC and Cabinet Regulation No. 675 of 30 August 2011 "Procedures for the Entry and Residence in the Republic of Latvia of Citizens of the Union and their Family Members" the person had no right to stay in Republic of Latvia without a valid visa or a residence permit.

The court concluded that the sanction is proportionate.

JSC "Air Baltic" appealed the decision pointing out that Section 114.² of the Latvian Administrative Violations Code is based on the Article 4 of Directive 2001/51/EC, which means that it applies only in cases when the passenger has received a refusal to enter any of the Schengen Member States in accordance with the Schengen Convention.

The State Border Guard highlighted that according to the Schengen Border Code, in some cases they can depart from the general order and let a third-country national to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations, while the carrier is entitled to transport such a person, if these mitigating conditions are identified before the departure.

The State Border Guard referring to the European Court of Justice case No.C-575/12 agreed to cancel the decision and end the administrative violation case, because there was no "Refusal of entry at the border" drawn up in case of that person.

Main reasoning / argumentation (max. 500 chars)	<p>The Section 114.2 of the Latvian Administrative Violation Code specifies liability in the case of the carriage of citizens of such state that is not a Member State of the European Union or European Economic Area, from such states to the Republic of Latvia, if the referred to persons do not have the necessary travel documentation to cross the border of the Republic of Latvia and if the carrier has performed it by sea, air or land transport.</p> <p>The State Border Guard, taking into account that the person had already been unlawfully brought before the valid date of the start of Schengen visa and that a person was a minor, allowed the person to enter the Republic of Latvia by issuing a Schengen visa at the border in accordance with Schengen Border Code Article 5, clause 4, sub-clause “c”.</p> <p>There was no "Refusal of entry at the border" drawn up in the case of the person. In the specific case the carrier could be punished if at the border check a “Refusal of entry” had been issued in relation to the person.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue was about the dispute about the proportionality of the penalty.</p> <p>JSC “Air Baltic” pointed that in accordance with the Schengen Convention in particular case penalty could be applied, if the passenger had received a Refusal to enter into the Republic of Latvia, but it had not happened.</p> <p>The State Border Guard referring to European Union Court case No.C-575/12 acknowledged the appeal and agreed to terminate the administrative violation case.</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>Division of Criminal Cases of Riga Regional court satisfied the appeal of JSC “Air Baltic” to revoke the decision of the State Border Guard and to terminate the administrative violation case.</p>
Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>“Valsts robežsardze, ņemot vērā, ka “B” jau bija prettiesiski atvesta pirms Šengenas vīzas derīguma termiņa sākuma un to, ka persona bija nepilngadīga, atbilstoši Šengenas robežu kodeksa 5.panta 4.punkta “c” apakšpunkta regulējumam atļāva personai ieceļot Latvijas Republikā, izdodot Šengenas vīzu uz robežas.</i></p> <p><i>Personai (konkrētajā gadījumā – “B”) netika sastādīts “Ieceļošanas atteikums pie robežas”.</i></p> <p><i>No minētā, kā arī no Eiropas Savienības Tiesā izskatītajā lietā C-575/12 tiesas sēdē paustajām atziņām, (..), secināms, ka pārvadātājs sodāms par personas neatbilstību Šengenas Robežu kodeksā minētajiem nosacījumiem gadījumos, kad Valsts robežsardzes amatpersonu robežpārbaudē personai tiek sastādīts Ieceļošanas atteikums, ar kuru tiek atteikta ieceļošana Latvijas Republikā.”</i></p> <p>The State Border Guard, taking into account that the person had already been unlawfully brought before the valid date of the start of Schengen visa and that a person was a minor, allowed the person to enter the Republic of Latvia by issuing a Schengen visa at the border in accordance with Schengen Border Code Article 5, clause 4, sub-clause “c”.</p>

	<p>There was no "Refusal of entry at the border" drawn up in relation to the person (in the present case "B").</p> <p>Also from quotes during the hearing in the European Court of Justice case C-575/12 (..) it is concluded, that a carrier shall be punished for person's unconformity with the rules mentioned at the Schengen Borders Code, in cases when at the border check an official of State Border Guard had drawn up a Refusal of entry, with whom entry into the Republic of Latvia had been refused."</p>
<p>Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>No</p>