 20-0526 Public Comment

EDC COB <edc.cob@edcgov.us>

BOS DCD 12/23/2020

Fwd: PCR Amplification- Please add Agenda Item

2 messages

Kim Dawson <kim.dawson@edcgov.us> Wed, Dec 23, 2020 at 10:39 AM
To: EDC COB <edc.cob@edcgov.us>

Please include with the COVID item. Thanks Kim

---------- Forwarded message ---------
From: **keeley link** <keeley.link@gmail.com>
Date: Wed, Dec 23, 2020 at 10:31 AM
Subject: Fwd: PCR Amplification- Please add Agenda Item
To: Brian Veerkamp <bosthree@edcgov.us>, David Livingston <david.livingston@edcgov.us>, Don Ashton <don.ashton@edcgov.us>, Don Semon <don.semon@edcgov.us>, George Turnboo <racecar56g@yahoo.com>, Greg Stanton <greg.stanton@edcgov.us>, John D'Agostini <john.dagostini@edso.org>, John Hidahl <bosone@edcgov.us>, Kim Dawson <kim.dawson@edcgov.us>, Lori Parlin <bosfour@edcgov.us>, Lynnan Svensson <lynnan.svensson@edcgov.us>, Michael Ungeheuer <michael.ungeheuer@edcgov.us>, Nancy Williams <nancy.williams@edcgov.us>, Shiva Frentzen <bostwo@edcgov.us>, Sue Novaser <bosfive@edcgov.us>, Todd White <toddwhite2006@hotmail.com>
CC: Amelia Blanchard <blanchard221.ab@gmail.com>, Amy Briggs <amydee@surewest.net>, Andy Gregg <andy@gutsracing.com>, Cheryl Bockus <cjbockus@att.net>, Deana Visentin <caldixiechick48@gmail.com>, Deann Austin <samsmom95@gmail.com>, Deedee Holland <D2holland@gmail.com>, Denise Burke <deniseburke@sbcglobal.net>, Elena Burkhart <smagina_26@mail.ru>, Jacquie Henifin <jacquelinehenifin@yahoo.com>, James Rodda <jamesrodda@yahoo.com>, Jamie Hall <mathewsjamie@yahoo.com>, Jen Fowler <jjf95726@comcast.net>, Jennifer Winter <jennifercolleenwinter@gmail.com>, Jill De Marce <jilldemarce@yahoo.com>, Jobecca Nelson <jobecca86@gmail.com>, Juliana Long <juliana.long@att.net>, Kasey Channell <kkchannell@hotmail.com>, Katherine Paterson <kmp0163@yahoo.com>, Laura Bradly <shop4.deals@yahoo.com>, Leslie Green <lesliegrn7@yahoo.com>, Maggie Boling <maggiebowling@yahoo.com>, Mandi Rodriguez <mandiskis@yahoo.com>, Marlene Craven <mcraven53@comcast.net>, Megan Soracco <megsoracco@gmail.com>, Melisa Wilson <Melisawilson22@comcast.net>, Misty Greeson <misty@a1bumper.com>, Pam Bradford <prbradford@hotmail.com>, Patti Miles <pattimiles1@gmail.com>, Regina Weeks <queenweeks@aol.com>, Robin Jarret <rockinrobin2020j@gmail.com>, Roger Cuzada <roger.luzada@sbcglobal.net>, Rosalee Collins Chilcoat <rchilcoat@netzero.com>, Rychelle Gallemore <rychellemybelle@gmail.com>, Sandra Blacet <sblacet@sbcglobal.net>, Tracy Doyle <tracyoilsistas@gmail.com>, Kevin Kiley <assemblymember.kiley@assembly.ca.gov>, Gallagher <assemblymember.gallagher@assembly.ca.gov>, Frank Bigelow <assemblymember.bigelow@assembly.ca.gov>, Tom McClintock <kimberly.pruet@mail.house.gov>, Brian Dahle <senator.dahle@senate.ca.gov>, Stacie Meyer <stacie.allison.meyer@gmail.com>, Allen Link <allen@linkselectric.net>, Krysten Kellum <photo@mtdemocrat.net>, Justin Taylor <foothill7tv@gmail.com>, <freedomangels2.0@protonmail.com>, Gabrielle Ingram <freedomisnonpartisan@gmail.com>, Melissa Whetsell <msmelissalevi@gmail.com>

Board of Supervisors,

Florida is now requiring labs to provide PCR amplification cycles used for all test results. See Florida Department of Health order attached.
It would be fantastic if El Dorado County required the same from the labs here. The people of this county deserve transparency and the more that transparency is withheld, the more distrust that grows within the public.
There are legitimate concerns with the PCR tests. Portugal's courts have already made it illegal to quarantine based on PCR tests, see attached. Also please follow the link below to learn more about PCR tests and how they are being used currently.
I appreciate your attention to this urgent matter and hope to get this issue addressed as soon as possible. A response would be appreciated. Merry Christmas and Happy New Year!

Mission:
To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

Florida HEALTH

Ron DeSantis
Governor

Scott A. Rivkees, MD
State Surgeon General

Vision: To be the Healthiest State in the Nation

Mandatory Reporting of COVID-19 Laboratory Test Results: Reporting of Cycle Threshold Values

December 3, 2020

Laboratories are subject to mandatory reporting to the Florida Department of Health (FDOH) under section 381.0031, Florida Statutes, and Florida Administrative Code, Chapter 64D-3.

- All positive, negative and indeterminate COVID-19 laboratory results must be reported to FDOH via electronic laboratory reporting or by fax immediately. This includes all COVID-19 test types—polymerase chain reaction (PCR), other RNA, antigen and antibody results. For a list of county health departments and their reporting contact information, please visit www.FLhealth.gov/chdepicontact.
- Cycle threshold (CT) values and their reference ranges, as applicable, must be reported by laboratories to FDOH via electronic laboratory reporting or by fax immediately.

As per Florida Administrative Code, rule 64D-3.031, laboratories must report all of the following:

- The patient's:
  - First and last name, including middle initial
  - Address (including street, city, state and ZIP code)
  - Telephone number (including area code)
  - Date of birth
  - Sex
  - Race
  - Ethnicity (Hispanic or non-Hispanic)
  - Pregnancy status, if applicable
  - Social Security number
- The laboratory:
  - Name, address and telephone number of laboratory performing test
  - Type of specimen (e.g., stool, urine, blood, mucus, etc.)
  - Date of specimen collection
  - Specimen collection site (e.g., cervix, eye) if applicable
  - Date of report
  - Type of test performed and results, including reference range, titer when quantitative procedures are performed and all available results on speciation, grouping or typing of organisms
- The submitting provider's:
  - Name
  - Address (including street, city, state and ZIP code)
  - Telephone number (including area code)
  - National provider number (NPI)

If your laboratory is not currently reporting CT values and their reference ranges, the lab should begin reporting this information to FDOH within seven days of the date of this memorandum. If your laboratory is unable to report CT values and their reference ranges, please fill out the brief questionnaire attached to this memorandum and submit by facsimile to the FDOH's Bureau of Epidemiology confidential fax line at 850-414-6894, within seven days of the date of this memorandum

Florida Department of Health
Division of Disease Control and Health Protection
Bureau of Epidemiology
4052 Bald Cypress Way, Bin A-12 • Tallahassee, FL 32399
PHONE: 850/245-4401 • FAX: 850/413-9113
FloridaHealth.gov

PHAB Accredited Health Department
Public Health Accreditation Board

Thank you,
Keeley Link
916-599-5455
Allison James Estates and Homes
Lic# 02003906

PDF Portuguese Court Rules PCR Tests…

https://www.greenmedinfo.com/blog/covid-19-rt-pcr-test-how-mislead-all-humanity-using-test-lock-down-society

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Kim Dawson
Clerk of the Board of Supervisors
County of El Dorado

330 Fair Lane, Building A
Placerville, CA 95667
(530) 621-5393
kim.dawson@edcgov.us

EDC COB <edc.cob@edcgov.us> Wed, Dec 23, 2020 at 10:45 AM
To: Kim Dawson <kim.dawson@edcgov.us>

Will Do.

Office of the Clerk of the Board
El Dorado County
330 Fair Lane, Placerville, CA 95667
530-621-5390

[Quoted text hidden]

Portuguese Court Rules PCR Tests "Unreliable" & Quarantines "Unlawful"

Important legal decision faces total media blackout in Western world

***OffGuardian* | November 20, 2020**

An appeals court in Portugal has ruled that the PCR process is not a reliable test for Sars-Cov-2, and therefore any *enforced quarantine based on those test results is unlawful.*

Further, the ruling suggested that any forced quarantine applied to healthy people could be a violation of their fundamental right to liberty.

Most importantly, the judges ruled that *a single positive PCR test cannot be used as an effective diagnosis of infection.*

The specifics of the case concern four tourists entering the country from Germany – all of whom are anonymous in the transcript of the case – who were quarantined by the regional health authority. Of the four, only one had tested positive for the virus, whilst the other three were deemed simply of "high infection risk" based on proximity to the positive individual. All four had, in the previous 72 hours, tested negative for the virus before departing from Germany.

In their ruling, judges Margarida Ramos de Almeida and Ana Paramés referred to several scientific studies. Most notably **this study by Jaafar et al.**, which found that – when running PCR tests with 35 cycles or more – the accuracy dropped to 3%, meaning up to 97% of positive results could be false positives.

The ruling goes on to conclude that, based on the science they read, any PCR test using over 25 cycles is totally unreliable. Governments and private labs have been very tight-lipped about the exact number of cycles they run when PCR testing, but it is known to sometimes be **as high as 45**. Even fearmonger-in-chief Anthony Fauci has publicly stated anything over 35 is **totally unusable**.

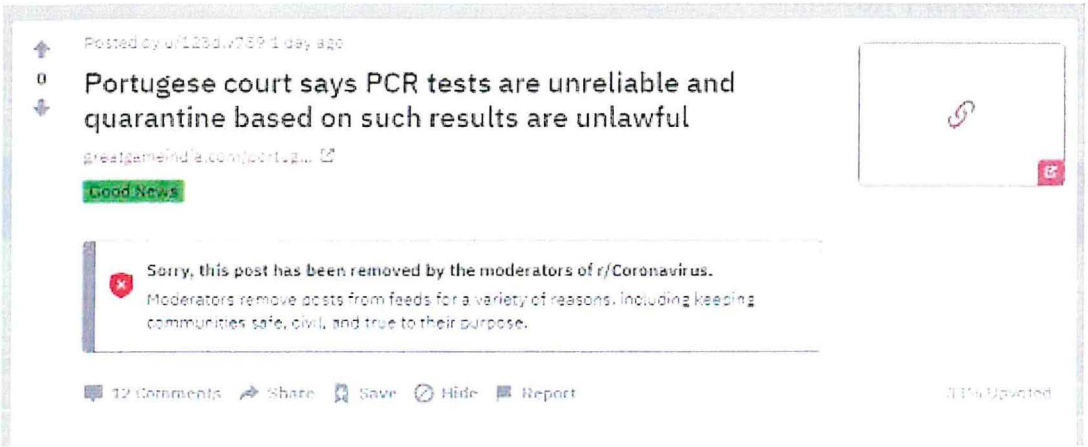
You can read the complete ruling in the original Portuguese **here**, and translated into English **here** (see "Judgment of the Lisbon Court of Appeal" below.) There's also a good write up on it on **Great Game India**, plus a Portuguese professor sent a long email about the case to **Lockdown Sceptics**.

*

The media reaction to this case has been entirely predictable – they have not mentioned it. At all. Anywhere. Ever.

The ruling was published on November 11th, and has been referenced by many alt-news sites since... but the mainstream outlets are maintaining a complete blackout on it.

The reddit Covid19 board actually **removed the post**, because it was "not a reliable source", despite relying on the official court documents:



Lookout for a forced and disingenuous "fact-check" on this issue from HealthFeedback or some other "non-partisan" outlet in the near future. But until they find some poor shlub to lend their name to it, the media blackout will continue.

Whatever they say, this is a victory for common sense over authoritarianism and hysteria.

Judgment of the Lisbon Court of Appeal

Process: 1783 / 20.7T8PDL.L1-3
Reporter: MARGARIDA RAMOS DE ALMEIDA
Descriptors: HABEAS CORPUS
INTEREST IN ACTING
SARS-COV-2
RT-PCR TESTS
PRIVACY OF LIBERTY
ILLEGAL DETENTION

Document No.: RL
Date of the Agreement: 11/11/2020
Voting: UNANIMITY
Full Text: S
Partial Text: N

Procedural Medium: CRIMINAL RESOURCES
Decision: Denied Provision

Full Text Decision: **They agree to a conference at the 3rd Criminal section of the Lisbon Court of Appeal**

I - Report

1. By decision of 08/26-2020, the request for *habeas corpus* was granted, **as it**

was illegal to detain them, determining **the immediate restitution to the freedom of Claimants SH__SWH___, AH___ and NK___. 2.** Then came the **REGIONAL HEALTH AUTHORITY,** represented by the Regional Health Directorate of the Autonomous Region of the Azores, to appeal this decision, asking the final to validate *the mandatory confinement of the applicants, as they are carriers of the SARS-CoV-2 virus (AH___) and for being under active surveillance, due to high risk exposure, decreed by the health authorities (SH__, SWH__ and NK___).* **4.** The appeal was admitted. **5.** Mº Pº, in his reply, defends that the present appeal must be considered unfounded. **6.** In this court, the Former PGA after a visa. **II - previous point.** Since the appeal filed by the appellant must be rejected, the court will limit itself, under the terms of paragraphs 1, a), and 2 of article 420 of the Code of Criminal Procedure, to briefly specify the grounds of the decision. **III - justification. 1.** The decision handed down by the "a quo" court reads as follows: Proven facts:

1. On 08/01/2020 the claimants arrived on the island of São Miguel, coming by plane from the Federal Republic of Germany, where, in the 72 (seventy-two) hours prior to arrival, they had performed a test to COVID19, with a negative result and whose copies they presented and delivered to the Regional Health Authority, upon arrival at the airport in Ponta Delgada.

2. On 08/07/2020 and during their stay on the island of São Miguel, the applicants AH___ and NK___ carried out a second test to COVID19.

3. On 08/10/2020 and also during their stay on the island of São Miguel, the applicants SH___ and SWH___ carried out a second test to COVID19.

4. On 08/08/2020 the applicant AH___ was, by telephone, informed that her test carried out the previous day had accused "detected."

5. From that day 08/08/2020 the applicant AH___ stopped cohabiting with the remaining three applicants, having always maintained a distance never less than 2 (two) meters from them.

6. On 08/10/2020 the applicants SH___, SWH___ and NK___ were informed, by telephone, that their tests had been "negative."

7. On 08/10/2020, the document was sent to all applicants via email. 25, 25verse, 26 and 26 verse, signed by the Health Delegate of the municipality of Lagoa, in office, Dr. Magno José Viveiros Silva, called Notification of Prophylactic Isolation - Coronavirus SARS-CoV-2 / COVID Disease - 19, and two annexes (only one of them in English) and in which it reads (equal content except for the identification of each of the Applicants): "Isolation (...) Notification of Prophylactic Isolation Coronavirus SARS- CoV-2 / COVID disease - 19 Mário Viveiros Silva Autoridade de Saúde de Lagoa Pursuant to Normative Circulars No. DRSCINF / 2020/22 of 2020/03/25 and DRS CNORM2020 / 39B of 2020/08/04 of the REGIONAL HEALTH AUTHORITY

(attached) and the Standard no. 015/2020, of 7/24/2020 of the General Health Directorate (attached) I determine the PROPHYLACTIC INSULATION OF (...) Citizen Card Holder / PASSPORT No. (...), with validity ... until ... with the social security identification number from 08/08/2020 to 08/22/2020 due to the risk of contagion and as a measure COVID 19 (SARS-Cov-2) containment date 2020/08/10 (...)

8. The Claimants requested to send the said results, and the test report made to Claimants AH___ and NK___ was sent via e-mail on 08/13/2020 and to the Claimants SH___ and SWH___ on yesterday, 08/24/2020, via e-mail, reports written in Portuguese.

9. Between the 1st and the 14th of August the applicants were accommodated in the accommodation Marina Mar II, in Vila Franca do Campo.

10. From August 14th onwards, applicants are accommodated at "THE LINCE AZORES GREAT HOTEL, CONFERENCE & SPA", in Ponta Delgada (where they are currently located), by order of the Health Delegate as described in 7 as follows: - In room 502 are the applicants SH___ and SWH___. - In room 501 is the applicant AH___. - In room 506 is the applicant NK___.

11. The applicants tried at least 3 times to contact the telephone helpline they know (296 249 220) to be clarified in their language or at least in the English language, but they never had any success, since they only answer and respond in Portuguese, which applicants do not understand.

12. At the hotel, meals are delivered to the room, by hotel services, at predetermined times and according to a choice made by a third party, except during the first 3 days at Hotel Lynce where breakfast was served and the remaining meals through room service.

13. On August 15th, while fulfilling the prophylactic isolation determined by the Health Delegate, the applicant AH___ started to suffer from an inflammation in the mouth, apparently resulting from the dental appliance she uses.

14. Having, by telephone, to 296 249 220, I shared this situation with the Regional Health Authority, who requested the necessary medical support.

15. This request was ignored by the referred helpline, which did not provide the required AH___ with the necessary support.

16. Not seeing any support, two days later, on August 17, properly protected by a mask and gloves, the applicant SWH___ left her room, went to the pharmacy closest to the hotel, where she acquired an ointment to temporarily quell referred situation, having immediately returned to the hotel and to his room.

17. On 08/19/2020 it was sent by the Health Delegate, Dr. JMS___, to the Claimants e-mail, where it reads:

"(...) AH___ is only cured after having a negative test and a 2nd negative cure test, when that happens the health delegation will contact you (...) (sic).

18. On 08/21/2020 the following message was transmitted to the four applicants, by Health Delegate Dr. JMS___, by email: "Namely, when the quarantine is over, you have to do a test and if it is negative you can leave home "(sic).
19. On that same August 21st, the applicant SH___ questioned the referred doctor and Health Delegate, Dr. JMS___, by e-mail that sent, the following (translated into Portuguese in free regime):
"Dear Dr. JMS___ ,
We have already done two COVID / person tests, all of which were negative (SH___, SWH___, NK___). ..and after that we spent 2 weeks in isolation, and none of us have any symptoms!!
We have Dr. MMS ___ documents, confirm.
Nobody told us anything about the new tests after the isolation tim ?!
We have already rescheduled our flights and plan to leave the island.
Explain the reason for your statement.
Why was the AH___ COVID test not done yesterday?
Greetings,
SH___ "20.The
claimants did not receive any response to this e-mail, with the exception of Claimant AH___ who was notified of a new screening test, specifically, for the next day 29/08/2020.
21. On 08/20/2020 the applicant AH___ carried out a third test to COVID19, and on the following day (08/21/2020), only by phone, it was informed that the result had accused "detected".
22.The applicant AH___ asked to be sent written evidence of this positive result, which was sent to her via e-mail yesterday, 08/24/2020.
23.The Claimants questioned the reception staff at the hotel where they are staying, and were told that none of the four claimants, without exception, will be able to leave the rooms.
24. Applicants do not have, nor have they ever presented, any symptom of the disease (fever, cough, muscle pain, sneezing, lack of smell or palate).
25.The applicants have not explained the content of the two documents sent to them with the writings listed in paragraph 7.
26.The applicants have their habitual residence in the Federal Republic of Germany, identified in these documents.
Rationale:
The question that arises here is that the Claimants are deprived of their liberty (from the 10th of August until the present date, as shown by the proven facts) and, consequently, being able to use the present institute of the habeas corpus - as we will now explain -, it raises the question of whether or not there is a legal basis for this deprivation of liberty.

Indeed, without even questioning the organic constitutionality of the Resolution of the Council of the Regional Government No. 207/2020, of July 31, 2020, currently in force within the scope of the procedures approved by the Government of the Azores in containing the spread of the SARS-COV- virus 2 in this Autonomous Region, in the present situation the detention / confinement of the Claimants since last 10 August is materialized by a communication carried out via e-mail, in Portuguese, in the terms given as proven under point 7.

Now, as is clear from point 7 of the proven facts, the regional health authority, through the respective Health Delegate of the territorial area where the Claimants were staying, determined their prophylactic isolation under the Normative Circulars No. DRSCINF / 2020 / 22 of 2020/03/2025 and DRS CNORM2020 / 39B of 2020/08/04 of the REGIONAL HEALTH AUTHORITY and Norm no. 015/2020, of 07/24/2020 of the General Directorate of Health. And, it was through you are from a communication with the aforementioned support, it is emphasized, in normative circulars and a norm of the General Directorate of Health, that the Regional Health Authority deprived the Claimants of their freedom, because from the proven facts it derives from the satiety that these, in rigor of the concepts, were detained from the 10th to the 14th of August 2020 in a hotel development in Vila Franca do Campo and from the 14th of August 2020 until the present date confined, and therefore detained, in a hotel room in this city of Ponta Delgada . We cannot forget, not least because it stands out from the list of proven facts, that the Claimant's power of movement and right to mobility - or any other individual who is in the same situation - are so limited that the first exit from the rooms where they found was to go to this court and make statements (with the exception of the trip to the applicant's pharmacy SWH___ in clear despair to help her daughter's pain in the proven terms).

In short, after analyzing the factuality found, it is inexorable to conclude that we are facing a real deprivation of the personal and physical freedom of the applicants, not allowed by them, which prevents them not only from moving, but also from being in family, living for about 16 days. separated (claimants SH___ and SWH___ and their daughter, Claimant here, AH___) and, in the case of Claimant NK___ totally alone, without any physical contact with anyone. To say that there is no deprivation of liberty because at any time they may be absent from their respective rooms, in which they find themselves is a fallacy, just look at the communications made to them after the 10th of August, none of them in the German language, and the conditions in which they have lived (not forgetting that they are foreign citizens with the inherent linguistic barrier) or requesting their return to their place of origin is a fallacy, and for this conclusion, it is enough to pay attention to the latest communications made

in Portuguese, underlining of which the one given as proven under point 8 stands out, in particular "Namely, when the quarantine is over, you have to do a test and if this is negative you can leave the house as the hotel where you are confined in 3 rooms. .
Therefore, if the Claimants are deprived of their liberty, in the face of proven circumstances, it is necessary to trace the path in which we move, beginning the journey through the guiding light of the Portuguese legislative system: the Constitution of the Portuguese Republic.
Thus, in terms of the hierarchy of norms, it is necessary to remember that, as provided for in article 1 of the CRP, "Portugal is a sovereign Republic, based on the dignity of the human person and on the popular will and committed to the construction of a free, just society and supportive. ". Hence, it is clear that the unity of meaning in which our system of fundamental rights is based is based on human dignity - the principle of the dignity of the human person is the axial reference of the entire system of fundamental rights.
One of them, the most relevant in view of its structuring nature of the democratic state itself, is the principle of equality, provided for in article 13 of the CRP, which states, in its paragraph 1, that "All citizens have the same social dignity and are equal before the law. ", adding paragraph 2, that" No one can be privileged, benefited, harmed, deprived of any right or exempt from any duty due to ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social status or sexual orientation. "
And, in what matters here, under the heading "right to freedom and security", article 27, no. 1 of the CRP provides, "Everyone has the right to freedom and security", referring José Lobo Moutinho, in annotation to this article, that "Freedom is an absolutely decisive and essential moment - not to say, the very constitutive way of being - of the human person (Ac. n ° 607/03:" ontic demand "), which lends him that dignity in The Portuguese legal order (and, above all, legal-constitutional) finds its granitic foundation (Article 1 of the Constitution). In this sense, one can say the cornerstone of the social building "(Ac. N ° 1166/96)" (aut.cit., In op. Cit., P. 637).
*Since human freedom is not one-dimensional and can take on multiple dimensions, as exemplified in Articles 37 and 41 of the CRP, the freedom in question in Article 27 is physical freedom, understood as freedom of bodily movement, of coming and going, ambulatory or locomotion freedom, stipulating in paragraph 2 of this last article that "**No one can be totally or partially deprived of liberty, unless as a result of a condemnatory judicial sentence for the practice of an act punishable by law with imprisonment or imprisonment. Judicial application of a security measure."***
The exceptions to this principle are typified in paragraph 3, which provides

that:

*"**Except for this principle is deprivation of liberty, for the time and under the conditions determined by law, in the following cases:***

a) Arrest in flagrante delicto;

b) Detention or preventive detention for strong indications of a criminal offense corresponding to a prison sentence with a maximum limit of more than three years;

c) Arrest, detention or other coercive measure subject to judicial control, of a person who has entered or remains illegally in national territory or against whom extradition or expulsion proceedings are underway;

d) Disciplinary imprisonment imposed on military personnel, with guarantee of appeal to the competent court;

e) Subjecting a minor to protection, assistance or education measures in an appropriate establishment, decreed by the competent judicial court;

f) Detention by judicial decision due to disobedience to the decision taken by a court or to ensure appearance before the competent judicial authority;

g) Detention of suspects, for the purposes of identification, in cases and for the time strictly necessary;

h) Internment of a patient with a psychic anomaly in an appropriate therapeutic establishment, decreed or confirmed by a competent judicial authority. "

Finally, it should be remembered that, in case of deprivation of liberty against the provisions of the Constitution and the Law, the State is constituted with the duty to indemnify the injured party under the terms established by the law, as follows from paragraph 5 of article 27, noting that, in line with article 3 of the CRP:

(...) 2. The State is subordinate to the Constitution and is based on democratic legality.

3. The validity of laws and other acts of the State, autonomous regions, local authorities and any other public entities depends on their compliance with the Constitution.

When we arrived here, having drawn up the legal territory, let us take a closer look at the situation in which the Regional Health Authority moved in the situation under analysis.

Claimants SH__SWH__ and NK_ underwent a screening test for the SARS-CoV-2 virus, the result of which was negative for all, with the same positive test for Claimant AH___, which led to the aforementioned order of prophylactic isolation and consequent permanence of these in the terms set out and proven.

Therefore, in view of the content of the notification made to the Claimants, this court cannot fail to express, ab initio, its perplexity at the determination of

prophylactic isolation to the four Claimants.
As follows from the definition given by the General Directorate of Health, "Quarantine and isolation are measures of social isolation essential in public health. They are especially used in response to an epidemic and are intended to protect the population from transmission between people. The difference between quarantine and isolation stems from the state of illness of the person who wants to be away. In other words:
"quarantine is used in people who are assumed to be healthy, but who may have been in contact with an infected patient;
isolation is the measure used in sick people, so that through social distance they do not infect other citizens. " (at https://www.sns24.gov.pt/tema/doencas-infecciosas/covid-19/isolamento/?fbclid=IwAR34hD77oLCpxUVYJ9Ol4ttgwo4tsTOvPfIa3Uyoh0EJEbCs3jEihkaEPAY#sec-0).
Turning to the present case, the Regional Health Authority decided to make a blank slate of essential concepts, because they delimit differentiated treatment (because different, pass the pleonasm), the situations of infected people and those who were in contact with it, before the order of prophylactic isolation to all claimants, although only one of them has positive results to the aforementioned screening test. And, more decided, to make a dead letter of the Resolution of the Government Council no. 207/2020 of 31 of July, forbidding to the mandatory submission the judicial validation of the competent court decreed that it is mandatory quarantine, when it derives to the satiety of the facts proven that Claimants SH__SWH__ and NK___, at most, are subject to mandatory quarantine.
It did not do so within the 24 hours provided for in point 6 of the aforementioned Resolution, not even within a broader period - as in the 48 hours provided for in article 254, paragraph 1, point a), of the Criminal Procedure Code, or in article 26, no. 2, of the LSM - continuing to make any communication and, therefore, the evident restriction of the freedom of Claimants SH__SWH__ and NK_ will always be illegal.
In this step, the aforementioned Government Council Resolution No. 207/2020, of July 31, 2020, provides in point 4 that in cases where the SARS-CoV-2 virus test result is positive, the local health, within the scope of its competences, will determine the procedures to be followed. The Applicant AH___ positive in the screening test for the virus in question, was notified, reiterate in the same terms as the other Applicants, of the order of prophylactic isolation between 08/10/2020 to 08/22/2020.
At this point, it is necessary to make it clear that the notification made as proven under point 7, is brought from what appears in the DGS015 / 2020 Standard, a rule to which it alludes in addition to the normative circulars

(available for consultation at https: //www.dgs.pt/directrizes-da-dgs/normas-e-circulares-normativas/norma-n-0152020-de-24072020-pdf.aspx), and tell us, in what matters here: (...) High Risk Exposure Contacts
15. A contact classified as having high risk exposure, in accordance with Annex 1, is subject to:
a. Active surveillance for 14 days from the date of the last exposure;
b. Determination of prophylactic isolation, at home or another place defined at local level, by the Health Authority, until the end of the period of active surveillance, according to the model of Dispatch no. 2836-A / 2020 and / or n 3103-A / 20202 (model accessible at http://www.seg-social.pt/documents/10152/16819997/GIT_70.docx/e6940795-8bd0-4fad-b850-ce9e05d80283)
Following this norm of the General Directorate of Health, among others, in the normative circular No. DRSCNORM / 2020 / 39B, from 2020-08-04 (available for consultation at http://www.azores.gov.pt/NR/rdonlyres/25F80DC1 -51E6-4447-8A38-19529975760 / 1125135 / CN39B_signed1.pdf),
(...)
a. Close contacts of high-risk. Close contacts of high risk are treated as suspect cases until the laboratory result of the suspected case. These close contacts should be screened for SARS-CoV-2. High-risk contacts are considered: i. Cohabitation with confirmed case of COVID-19; (...)
ii. Surveillance and Control of Close Contacts
3. Close contacts of high risk, given that, currently, it is estimated that the incubation period of the disease (time elapsed from exposure to the virus to the appearance of symptoms) is between 1 and 14 days, they must comply with 14 days of prophylactic isolation, even if they present negative screening tests during that period, and a test must be carried out on the 14th day. If the 14th day test result is negative, they are discharged. In the event that close contacts of high risk cohabit with the positive case, they should only be discharged when determining the cure of the positive case, and the respective prophylactic isolation should therefore be extended.
(...)
13. Compliance with prophylactic isolation
All persons identified as suspected cases, until the negative results are known, comply with prophylactic isolation;
All people who tested positive for Covid-19 and who are discharged after a cure test (internment or home) do not need to undergo a new isolation period of 14 days or repeat a new test on the 14th day.
All passengers disembarking at airports in the Region from airports located in areas considered to be zones of active community transmission or with active transmission chains of the SARS-CoV-2 virus must comply with the procedures

in force in the Region at the time.

Once we have arrived, let us analyze the legal value of norms / guidelines from the General Health Directorate and normative circular 39B, from 04/08/2020, from the Regional Health Directorate, *leaving no doubt that we have entered the sphere of administrative guidelines.*
In this regard, with the specificity of reporting to the Tax Authority - which has the same administrative legal position as the National Health Authority in the ius imperium of the State-, CASALTA NABAIS (Tax Law, 6th ed., Almedina, p. 197), "the so-called administrative guidelines, traditionally presented in the most diverse forms such as instructions, circulars, circular-letters, circular-letters, normative orders, regulations, opinions, etc.", which are very frequent in tax law, constitute "internal regulations that, as they have only the tax administration as their recipient, only the latter owes them obedience, being, therefore, mandatory only for the agencies located hierarchically below the agency that authored them.
That is why they are not binding on individuals or courts. And this is whether they are organizational regulations, which define rules applicable to the internal functioning of the tax administration, creating working methods or modes of action, or whether they are interpretative regulations, which proceed to the interpretation of legal (or regulatory) precepts.
It is true that they densify, make explicit or develop the legal precepts, previously defining the content of the acts to be performed by the administration when they are applied. But that does not make them the standard of validity for the acts they support. In fact, the assessment of the legality of the acts of the tax administration must be carried out through direct confrontation with the corresponding legal norm and not with the internal regulation, which interposed between the norm and the act ".
Now, the problem of the normative relevance of the Circulars for Administration (Tax) was already raised and considered in the Constitutional Court Judgments No. 583/2009 and 42/14, of 11/18/2009 and 9/09/12, respectively, and that Court decided, with which we agree, that the prescriptions contained in the Circulars for Tax Administration, regardless of their persuasive irradiation in the practice of citizens, do not constitute norms for the purposes of the constitutionality control system committed to the Constitutional Court.
As underlined in that note (Judgment 583/2009) "(...) These acts, in which the" circulars "are prominent, emanate from the power of self-organization and the hierarchical power of the Administration. They contain generic service orders and it is for this reason and only within the respective subjective scope (of the hierarchical relationship) that they are guaranteed compliance. They incorporate guidelines for future action, transmitted in writing to all

subordinates of the administrative authority that issued them. These are standardized decision modes, assumed to rationalize and simplify the operation of services. This is worth saying that, although they can indirectly protect legal certainty and ensure equal treatment through uniform application of the law, they do not regulate the matter they deal with in relation to private individuals, nor do they constitute a decision rule for the courts. "

Consequently, lacking a heteronomous binding force for individuals and not imposing themselves on the judge except for the doctrinal value that they may possess, the prescriptions contained in the "circulars" do not constitute rules for the purposes of the constitutionality control system within the jurisdiction of the Constitutional Court.

What is said, allows us to conclude that the administrative guidelines conveyed in the form of normative circulars, as in the present case, do not constitute provisions of legislative value that can be the subject of a declaration of formal unconstitutionality - see Judgment of the Supreme Administrative Court, of 21/06/2017, available for consultation in www.dgsi.pt .

And, this to make it clear that the norms invoked by the Regional Health Authority that supported the deprivation of liberty imposed on Claimants through notification of prophylactic isolation are non-binding administrative guidelines for Claimants. *By the way, just look at who they are addressed to respectively:*

Normative Circular No. DRSCNORM / 2020 / 39B: "For: Health Units of the Regional Health Service, Municipal Health Delegates (C / c Azores Regional Civil Protection and Fire Service, Line de Saúde Açores) Subject: Screening for SARS-CoV-2 and addressing suspected or confirmed cases of SARS-CoV-2 infection Source: Regional Health Directorate (...)

Standard 015/2020, of 7/24/2020: "SUBJECT: COVID-19: Tracking Contacts KEYWORDS: Coronavirus, SARS-CoV-2, COVID-19, Tracking Contacts (Contact Tracing), Epidemiological Investigation

FOR: Health System (...).

In this sequence, and, in summary form, this court cannot fail to underline that the present case, we allow ourselves to say aberrant, of deprivation of liberty of persons, absolutely lacks any legal basis, and do not come up with again. Argument that the defense of public health is at stake because the court always acts in the same way, that is, in accordance with the law, moreover, hence the need for judicial confirmation enshrined in the Mental Health Law in the case of compulsory internment, since the factuality found and the above results:

- The Claimants have been confined to the space of a room for about 16 days, based on a notification of "prophylactic isolation" until 08/22/2020, a period that has already been exceeded and the operated notification, which in any case is illegal as a means of detaining people for the reasons already explained

(just by paying attention to the constitutional rules mentioned above), has lapsed;
- Claimants have never been given any information, communication, notification, as appropriate, in their mother tongue, nor have they been provided with an interpreter, from the outset in flagrant violation of the European Convention on Human Rights (art. 5, no. 2 and 6, paragraph 3, al. A) and the criminal procedural rules (see article 92 of the Criminal Procedure Code), that is, in our legal system a foreign person is detained and without mastery of the Portuguese language is immediately appointed as an interpreter, and, in the case of the Claimants who limited themselves to travel to this island and enjoy its beauty, they were never granted such a possibility;
- Claimants after 8/22/2020 are confined to the space of a room based on the following communications:
- On 8/19/2020 it was sent by the Health Delegate, Dr. JMS___, to the Claimants e-mail , where it reads:
"(...) AH___ is only considered cured after having a negative test and a 2nd negative cure test, when this happens, the health delegation will contact you (...) (sic).
- On 08/21/2020 the following message was transmitted to the four applicants, by Health Delegate Dr. JMS___, via email: "Namely, when the quarantine is over, you have to do a test and if this is negative, you can leave home "(sic);
- The Claimants' deprivation of liberty was not subject to any judicial scrutiny. As we said initially, we could still consider the organic constitutionality of the Resolution of the Government Council No. 1207/2020, of June 31, however, we believe it is an unimportant issue for the object of the decision to be made, which is quick, because even In the light of such a resolution, the decision cannot be different, based on the decision of the Constitutional Court, of 07/31/2020, in the scope of the process nº 424/2020, and, because the position of the Regional Health Authority in the present circumstances leads back the application of normative circulars, with the value explained above.
Finally, and because this court has been ruling successively and recently within the scope of this "habeas corpus" institute in the face of orders issued by the Regional Health Authority, we allow ourselves to subscribe and underline the following excerpt from the first decision of this Criminal Investigation Court:
"The issue of compulsory confinement in the case of contagious diseases, and the terms under which it should occur, is a pressing issue, and which is not supported by article 27, paragraph 3, of the CRP, namely in its subparagraph h), where only the hospitalization of patients with psychic anomalies is foreseen in an appropriate therapeutic establishment, decreed or confirmed by the competent judicial authority. There is an urgent need to legislate on this

matter, establishing, in a clear way, the fundamental principles to be obeyed, leaving the detailed aspects to the derived law - and only these.
For, as Professor Gian Luigi Gatta says, which we quote here in a free translation, ***"right now, the country's energies are focused on emergency. But the need to protect fundamental rights, also and above all in an emergency, the Courts are required to do their part. Because, in addition to medicine and science, law - and human rights law in the first place - must be at the forefront: not to prohibit and sanction - as is being stressed too much these days - but to guarantee and protect everyone we. Today the emergency is called a coronavirus. We don't know tomorrow. And what we do or don't do today, to maintain compliance with the system's fundamental principles, can condition our future. "*** *(in "I diritti fondamentali alla evidence of the coronavirus. Perché a legge sulla quarantena is necessary",) ".*
It will not be difficult to admit and accept that the legislative turmoil generated around the containment of the spread of COVID-19 had - and will continue to have - in its raison d'être the protection of public health, but this turbulence can never harm the right to death. Freedom and security and, ultimately, the absolute right to human dignity.

It remains to decide accordingly.
(...)
Therefore, in light of the above, because the detention of the Claimants SH__SWH___, AH___ and NK___ is illegal, I decide to uphold the present request for habeas corpus and, consequently, determine their immediate restitution to freedom.
2. The appellant now formulated the following conclusions, which it drew from its motivation:
1. The purpose of this appeal is the decision handed down by the learned Court, which it considered to be "illegal to detain the Claimants SH__SWH___, AH___ and NK___" and decided " to uphold the present request for habeas corpus and, consequently, determine their immediate restitution to liberty. ";
2.Just for the sake of procedural economics, that is, as it is of little relevance for the assessment of the merits of the case, the factuality that has been proven is not appealed, however, it should be noted that it was based solely on the statements of the applicants themselves.
3. The contested decision on the grounds that the applicant did not comply with point 6 of Resolution of the Council of the Regional Government of the Azores No. 207/2020, of July 31, 2020, violated the scope of application of the same Resolution, defined in point 1 of the same Resolution;
4. The judicial validation of mandatory quarantine, provided for in point 6 of

the said resolution, only applies to the mandatory quarantine decreed for passengers who do not accept, alternatively, any of the procedures, provided for in point 1 of the aforementioned Resolution;
5. Applicants complied with the procedure provided for in paragraph 1 a) of Resolution No. 207/2020, of July 31, 2020, so they could never be subject to mandatory quarantine under that Resolution and, consequently, there is no place to judicial validation, provided for in point 6 of Resolution No. 207/2020, of July 31, 2020.
6. Contrary to what is defended in the contested decision, the Portuguese legal system allows for the adoption of exceptional measures, including separation of people, consequent decree of mandatory confinement of infected people and with a high probability of being infected, through the mechanism provided for in article 17 of Law no. 81/2009, of 21 August;
7. The Council of Ministers legitimately made use of the exceptional regulatory power, provided for in Article 17 of Law No. 81/2009, through the Resolutions of the Council of Ministers No. 55-A / 2020, of July 31, 2020 and No. 63-A / 2020, of August 14;
8. Paragraph 2 of the Resolution of the Council of Ministers no. 55-A / 2020, of July 31, 2020, ordered measures of an exceptional nature, necessary to combat COVID -19, to be applied throughout the national territory, namely those provided for in the regime attached to that resolution;
9. Article 2 of the Annex decreed that:
"Article 2
Mandatory confinement
1 - They are in mandatory confinement, in a health establishment, at their home or in another place defined by health authorities:
a) Patients with COVID - 19 and those infected with SARS -CoV-2;
b) Citizens for whom the health authority or other health professionals have determined active surveillance.
2 - (...) "
10. The applicant AH___ when infected with the SARS-CoV-2 virus, in compliance with article 2, paragraph 1, point a) of Annex I of the Resolution of the Council of Minister 55-A / 2020, had to be in mandatory confinement;
11. The Tribunal a quo, by decreeing the habeas corpus of AH___ and allowing its free movement, violated article 17 of Law no. 81/2009, of 21 August, by reference to article 2, no. 1, point a) of Annex I of the Resolution of the Council of Minister No. 55-A / 2020;
12. Applicants SH__SWH__ and NK_ according to the rules stipulated by the National Health Authority, contained in Norm 015/2020, of 07/24/2020, are contacts with High Risk Exposure, and must be subject to: a
. Active surveillance for 14 days, from the date of the last exhibition;

b. Determination of prophylactic isolation, at home or another place defined at local level, by the Health Authority, until the end of the period of active surveillance, according to the model of Dispatch no. 2836-A / 2020 and / or n 3103-A / 20202 "

13. The applicants SH__SWH__ and NK_, subject to active surveillance, in compliance with article 2, paragraph 1, point b) of Annex I of the Resolution of the Council of Minister no. 55-A / 2020, had to be in mandatory confinement;

14. The Tribunal a quo, by decreeing the habeas corpus of SH__SWH__ and NK_ and allowing their free movement, violated article 17 of Law no. 81/2009, of 21 August, by reference to article 2, no. 1, paragraph b) of Annex I of the Resolution of the Council of Minister no. 55-A / 2020.

15. It is imperative that the contested decision be revoked and replaced by one that validates the mandatory confinement of the applicants, as they are carriers of the SARS -CoV-2 virus (AH___) and because they are under active surveillance due to high risk exposure decreed by health authorities (SH__SWH__ and NK___).

3. In his reply, the M°P° drew the following conclusions:

1 - ***The Constitutional Court ruling of 7/31-2020 (Proc. 403/2020; 1. 'Section; Cons. José António Teles Pereira), after concluding that mandatory confinement, either through quarantine or through prophylactic isolation, constitutes a true deprivation of liberty not provided for in art. 27, no. 2, of the CRP, and that all deprivations of liberty require prior authorization from the Assembly of the Republic,*** *which was not the case with the Resolutions of the Regional Government of the Azores that imposed a mandatory quarantine, considered verified the organic unconstitutionality of the referred standards.*

2 - These rules, declared unconstitutional by the Constitutional Court, are in all materially identical to those contained in the Resolutions of the Council of Ministers no. 55-A / 2020, of 31-07, 63-A / 2020, of 14-08 , and 70-A / 2020, from 11-09, and no. 88-A / 2020, from 14-10, insofar as they provide for deprivations of liberty not provided for in an appropriate legal document emanating from the competent entity, as well as are not in the exceptions provided for in art. 27, no. 3, of the CRP, therefore they must also be disapplied for violation of art. 27 (1) of the CRP.

3 - Providing for art. 5, paragraph 1, al. e), the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms - Rome, 04-11-1950), concerning the Right to Freedom and Security, that "Everyone has the right to freedom and security "and that" No one can be deprived of their liberty, except in the following cases and according to the legal procedure: (...) "If it is the legal detention of a person liable to spread a contagious disease, of mental alien, alcoholic, drug addict or vagabond ", we can conclude that the deprivation of liberty of a

person liable to spread a contagious disease is a form of detention and that, according to the Convention, it is possible for States to provide for the detention of these persons in their domestic legislation.
4 - Taking into account the constitutional principle of the typicality of deprivation of liberty measures, and not providing for art. 27, of the CRP, in none of the paragraphs of number 3, the deprivation of liberty of a person "liable to spread a contagious disease",
5 - And having the subparagraph h) - which provides for the admission of a psychiatric anomaly in an appropriate therapeutic establishment - added by art. 11.0, no. 6, of Constitutional Law no. 1/97, of 20 September (4. 'Constitutional revision), at a time when the European Convention on Human Rights already expressly provided for the arrest of a person liable to spread contagious disease,
6 - And that the constitutional legislator, neither in the referred constitutional revision nor in a subsequent one, added another point to paragraph 3 of art. 27. To foresee this possibility, as he did with the internment of a patient with a psychic anomaly, we can conclude that we are faced with a conscious decision by the constitutional legislator not to allow the deprivation of liberty of a person liable to spread contagious disease, just for that fact.
7 - Analysis of the constitutional regime of the right to freedom and security provided for in art. 27, no. 1, of the CRP, we can conclude, therefore, that it is not possible for the legislator, even though through the Assembly of the Republic or the Government authorized by it, to create deprivations of liberty that are not provided for in no. 3 of the aforementioned constitutional norm, namely with regard to persons with infectious and contagious diseases, whether these deprivations of freedom are confinements, quarantines or prophylactic isolations, without incurring any rules created for that purpose in a material unconstitutionality for violation of said constitutional norm.
8 - Now returning to the legal regime for the admission of people with contagious diseases, Law No. 2036 of 08/08/1949 provided for the possibility of promoting the isolation or internment of people with infectious diseases, but only, in this case. Last case, in situations where there was a serious danger of contagion, with recourse to an authority of the isolation or internment decision.
9 - In turn, art. 17 of Law no. 81/2009, of 21-08, which revoked Law no. 2036 of 9/8/1949, allows the member of the Government responsible for the health area a special regulatory power, according to the stipulated by base XX of Law no. 48/90, of 24-08 (Basic Law of Health), namely, "to take necessary measures of exception in case of emergency in public health, including the restriction, suspension or the closure of activities or the separation of people who are not sick, means of transport or goods, who have been exposed, in

order to avoid the possible spread of infection or contamination ».
10 - ***From here, it follows that, as provided for in Law No. 2036 of 08-08-1949, the possibility of promoting the isolation or internment of people with infectious and contagious diseases is not provided for in this law. .*** *On the other hand, since the measures taken by the health authorities respect the Constitution and the law and the Constitutional Law does not provide for the deprivation of liberty for people with infectious diseases, the interpretation to be given to the expression "separation of people who are not patients, means of transport or goods, that have been exposed ", to be in accordance with the Constitution of the Portuguese Republic cannot reach the core of the right to freedom, that is, they must not constitute a total deprivation of freedom.*
11 - On the other hand, the current Basic Law on Health - Law No. 95/2019, of 04-09 - provides in Base 34, regarding the defense of public health, that the public health authority can «b) Unleash, according to the Constitution and the law, internment or compulsory health care for people who would otherwise constitute a danger to public health.
12 - Law no. 82/2009, of 02-04, which regulates the legal regime for the designation, competence and functioning of the entities that exercise the power of health authorities, provides in its art. 5 ° the powers of the health authority, namely, "c) To trigger, in accordance with the Constitution and the law, the internment or compulsory provision of health care to individuals in a situation of harm to public health".
13 - It follows that, since the measures taken by the health authorities respect the Constitution and the law, and the Constitutional Law does not provide for the deprivation of freedom of persons with infectious and contagious diseases, if the interpretation to be given to the expression «internment or the compulsory provision of health care to individuals who are in danger of harming public health 'either in the sense that health authorities can order internment, or other restrictive measure of freedom of movement, or the compulsory provision of health care by people with infectious and contagious diseases, such an interpretation of the law is materially unconstitutional for violation of art. 27 (1) of the CRP.
14 - Defining Law No. 27/2006, of 03-07 (Basic Law for Civil Protection) "Serious accident" as an unusual event with relatively limited effects in time and space, capable of affecting people and other beings living, goods or the environment, but establishing in art. 5, paragraph 1, al. a), the principle of priority of the public interest relative to civil protection over the interests of national defense, internal security and public health, we can conclude that serious public health situations, such as the current pandemic, are not included in the public interest regarding civil protection, therefore, are not included in the concepts of "major accident" and "catastrophe" referred to in art. 3 of the

Civil Protection Law.
15 - From here it can also be concluded that the Resolutions of the Council of Ministers - and the Resolutions of the Council of the Regional Government - which were based on the Basic Law of Civil Protection to declare "the contingency and alert situation, within the scope of the disease pandemic COVID-19 ", namely the Resolutions of the Council of Ministers no. 55-A / 2020, of 31-07, 63-A / 2020, of 14-08, 68-A / 2020, of 28-08, and 70-A / 2020, of 11-09 - revoked by Resolution of the Council of Ministers no. 88-A / 2020, of 14-10, currently in force -, which provide in point 2 the "mandatory confinement, in establishment of health, in their home or in another place defined by the health authorities: (...) «a) Patients with COVID-19 and those infected with SARS-CoV-2; (...) "b) Citizens for whom the health authority or other health professionals have determined active surveillance", have no legal basis, as ***the Civil Protection Law does not apply to situations of danger to health public.*** *16 - We can thus conclude that the Resolutions of the Council of Ministers no. 55-A / 2020, of 31-07, 63-A / 2020, of 14-08, 68-A / 2020, of 28-08 , 81/2020, 29-09 - the latter was revoked by Resolution of the Council of Ministers no. 88-A / 2020, of 14-10, currently in force -, and its Annex, which were issued by the Government, in the use administrative powers, created a regime that restricts the freedom of citizens with infectious diseases (quarantines, prophylactic isolation, etc.) and, to reinforce the application of a deprivation of liberty not permitted by the Constitution or provided for in law enabling situations of people with a contagious disease or danger to public health, established the combination of the practice of a crime of disobedience for such violations and the aggravation of the penalty provided for such a crime, directly violate art. 27 (1) of the CRP, so that, due to being unconstitutional, they should be disapplied in the specific case, contrary to the applicant's request, 17 - Maintaining the sub judice decision.* **4.** The applicant is the regional health authority, represented by the Regional Health Directorate of the Autonomous Region of the Azores. Decree-Law no. 11/93, of 1993-01-15, in its current version (Statute of the National Health Service) determines that (emphasis added): Article 1 **The National Health Service** , hereinafter referred to as SNS, **is an ordered and hierarchical set of institutions and official services that provide health care, operating under the supervision or supervision of the Minister of Health** . Article 3 **1 - The NHS is organized in health regions. 2 - Health regions are divided into health sub-regions, integrated by health areas.** Article 61 - **In each health region there is a regional health administration, hereinafter referred to as ARS**. 2 - The ARS have legal personality, administrative and financial autonomy and their own assets. **3 - The ARS have the functions of planning, resource distribution, guidance and coordination of activities, human resource**

management, technical and administrative support, as well as assessing the functioning of health care institutions and services. 4 - (...). In turn, Decree-Law no. 22/2012 stipulates Article 1 1 - Regional Health Administrations, IP, for short referred to as **ARS IP ., Are public institutes integrated in the indirect administration of the State** , endowed with autonomy administrative, financial and own assets. 2 - **The ARS, IP, continue their duties, under the supervision and supervision of the Government member responsible for the health area. 3 - The ARS, IP, are governed by the rules contained in this decree-law, by the provisions of the framework law of public institutes and in the Statute of the National Health Service and by the other rules that apply to it** . Article 3 **1 - The ARS, IP, have the mission of guaranteeing the population of the respective geographical area of intervention access to the provision of health care, adapting the available resources to the needs and complying with and enforcing health policies and programs in their intervention area.** 2 - The attributions of each ARS, IP, within the scope of the respective territorial circumscriptions: **a) Execute the national health policy, in accordance with global and sectoral policies, aiming at its rational organization and the optimization of resources** ; b) Participate in the definition of intersectoral planning coordination measures, with the objective of improving healthcare provision; c) Collaborate in the preparation of the National Health Plan and monitor its implementation at regional level; d) Develop and encourage activities in the field of public health, in order to guarantee the protection and promotion of the health of the populations; e) Ensure the execution of local intervention programs aimed at reducing the consumption of psychoactive substances, preventing addictive behaviors and reducing dependencies; f) Develop, consolidate and participate in the management of the National Integrated Continuing Care Network according to the defined guidelines; g) Ensure the regional planning of human, financial and material resources, including the execution of the necessary investment projects, of the institutions and services providing health care, supervising their allocation; h) To prepare, in accordance with the guidelines defined at national level, the list of facilities and equipment; i) To allocate, in accordance with the guidelines defined by the Central Administration of the Health System, IP, financial resources to institutions and services providing healthcare integrated or financed by the National Health Service and to private entities with or without profit making , who provide health care or act within the areas referred to in points e) and f); j) To celebrate, monitor and review contracts in the scope of public-private partnerships, in accordance with the guidelines defined by the Central Administration of the Health System, IP, and allocate the respective financial resources; l) Negotiate, conclude and monitor, in accordance with the guidelines defined at national level, contracts, protocols

and conventions of a regional scope, as well as carry out the respective evaluation and review, in the scope of healthcare provision as well as in the areas referred to in points e) and f); m) Guide, provide technical support and evaluate the performance of health care institutions and services, in accordance with the defined policies and guidelines and regulations issued by the competent central services and bodies in the different areas of intervention; n) To ensure the proper articulation between the health care services in order to guarantee compliance with the referral network; o) To allocate financial resources, through the signing, monitoring and review of contracts within the scope of integrated continuous care; p) Elaborate functional programs of health establishments; q) Licensing private units providing health care and units in the area of addictions and addictive behaviors in the social and private sector; r) Issue opinions on master plans for health units, as well as on the creation, modification and merger of services; s) Issue opinions on the acquisition and expropriation of land and buildings for the installation of health services, as well as on projects of the facilities of health care providers. 3 - In order to carry out their duties, the ARS, IP, may collaborate with each other and with other entities in the public or private sector, with or without profit, under the terms of the legislation in force. 5. **The provision of required *habeas corpus is* part of the provisions of article 220 of CPPenal, which reads as follows:** Habeas corpus due to illegal detention 1 - Those detained under the order of any authority may apply to the investigating judge of the area where if they find that they order their immediate judicial presentation, on any of the following grounds: a) The deadline for delivery to the judicial power has been exceeded; b) Keeping detention outside legally permitted places; **c) The detention was carried out or ordered by an incompetent entity; d) The detention is motivated by a fact for which the law does not allow it.** 2 - The request can be signed by the detainee or by any citizen in the enjoyment of their political rights. 3 - Any authority that raises an illegitimate obstacle to the submission of the application referred to in the preceding paragraphs or to its referral to the competent judge is punishable with the penalty provided for in article 382 of the Penal Code. **6. Enjoying.** Article 401 of the Penal Code stipulates the following: 1 - They have the legitimacy to appeal: a) The Public Ministry, of any decisions, even in the exclusive interest of the accused; b) The accused and the assistant, of decisions against them rendered; c) The civil parties, on the part of the decisions against each one rendered; d) Those who have been ordered to pay any sums, under the terms of this Code, or have to defend a right affected by the decision. 2 - Anyone who has no interest in taking action cannot appeal. **7.**The first question that arises here is that of the applicant's legitimacy, in the context of an appeal in criminal proceedings. **i.** We are within the scope of a criminal jurisdiction, whose purpose is to ensure

the effective exercise of the State 's *jus puniendi*, that is, which is dedicated to investigating and deciding on behavior that constitutes a crime or administrative offense. It is in this context and in view of this purpose, that the Law determines who has the legitimacy to be able to discuss the goodness of a decision handed down by a criminal court. **ii.** In this case, we note that the applicant is not a defendant, is not an assistant and has not made any civil claim that, given the principle of accession, would determine her position as a plaintiff or defendant. **iii.** Thus, before the Law and taking into account the list of interveners that the legislator understood may have legitimacy to intervene in a process in this type of jurisdiction, on appeal, we will have to conclude that the applicant lacks legitimacy to be able to come and discuss the content of a judicial decision in this context. **iv.** In fact, the practice of any crime, or any offense of an administrative nature, is not discussed here. It is certain that the question of possible consequences at criminal level, the recognition of the existence of an illegal detention, is a matter that will have to be discussed. In its own seat - that is, in an investigation that may be opened for this purpose, being completely foreign to the decision of the present case. **v.** We conclude, therefore, that the applicant lacks legitimacy to appeal against the decision rendered by the court "a quo". **8.** Regardless of the question of legitimacy, it appears that, likewise, the applicant lacks interest in taking action. **i.** As is clear from peaceful jurisprudence and doctrine in this regard, the interest in taking action means the need for someone to have to use the appeal mechanism as a way of reacting **against a decision that disadvantages the interests that he defends or that has frustrated his legitimate expectation or benefit. ii.** Now, in the present case, the question is - did the decision give rise to any disadvantage for the interests that the ARS defends? Or a legitimate expectation or benefit? The answer is manifestly negative. Otherwise, let's see. **iii.** ARS **continues its duties, under the supervision and supervision of the Government member responsible for the health area**. Thus, and immediately, either in view of the functions that are committed to it, or in view of their manifest hierarchy, in the face of guardianship, it will have to be concluded that no ARS pursues its own and autonomous interest, which it must defend. Whoever will continue, eventually, will be the respective Minister or the Government in which he / she is inserted, since the ARS "interests" will not be yours, but will be included in the health policy of the ministry that oversees such an entity. It should be noted, moreover, that in the definition of its attributions [1] it is not assigned any specific defense function, independently and in its own name, in court, of any interests that fall within its functions which, in what concerns with respect to criminal or administrative offenses, there are none ... **iv.** For its part, the interest that the applicant itself intends to defend and that appears in the application, at the end of this appeal - the

validation of the mandatory confinement of the applicants, for having the SARS -CoV-2 virus (AH___) and for being active surveillance, for high-risk exposure, decreed by health authorities (SH__SWH__ and NK___) - is in itself contradictory and goes beyond the purpose and scope of a criminal court. **Contradictory because the applicant does not admit that confinement corresponds to deprivation of liberty. If so, there is no glimpse of where the applicant's jurisdiction is based in the jurisdiction of a criminal court to validate "confinements** ". And outside the scope of action of a criminal court, because it is not for the court to make declarative decisions to validate infections or diseases… **v.** Finally, it is not seen that a legitimate expectation or benefit has an entity under the tutelage of a Government body, seen frustrated by the decision now being criticized. It follows that the applicant does not have an interest in taking action, which is why, under the provisions of paragraph 2 of article 401 of CP Penal, he cannot appeal the decision. **9.** The decision rendered by the "a quo" court to receive the present appeal does not bind this court (article 414 of CPPenal), so there is nothing to prevent its rejection.**10.** Nevertheless, and for peace and quiet of consciences, the following will also be added: Even if this were not understood, **the appeal presented would be manifestly unfounded, for the following succinct reasons** : **i.** First of all, due to the exhaustive and correct reasoning set out in the decision, by the "a quo" court, whose content is fully subscribed. In fact, **under the Constitution and the Law, health authorities do not have the power or legitimacy to deprive anyone of their freedom - even under the label of "confinement", which effectively corresponds to detention - since such a decision is only it can be determined or validated by a judicial authority, that is, the exclusive competence, in view of the Law that still governs us, to order or validate such deprivation of liberty, is entrusted exclusively to an autonomous power, to the Judiciary. Hence it follows that any person or entity that issues an order, the content of which leads to the deprivation of physical freedom, ambulatory, of others** (whatever the nomenclature this order assumes: confinement, isolation, quarantine, prophylactic protection, etc.), **that does not fit into the legal provisions, namely in the provisions of article 27 of the CRP and without having been given such decision-making power, by virtue of Law - from the RA, within the strict scope of the declaration of state of emergency or site, respected that the principle of proportionality is shown - that the mandate and specifying the terms and conditions of such deprivation , will be making an illegal detention, because ordered by an incompetent entity and because motivated by a fact for which the law does not allow it (** say , moreover, that this issue has already been debated, over time, regarding other public health phenomena, namely with regard to HIV and tuberculosis infection, for

example. And, let it be known, no one has ever been deprived of their freedom, due to suspicion or certainty of suffering from such diseases, precisely because the Law does not allow it). **It is in this context that, without any doubt, the situation under consideration in this process, being certain that the adequate means of defense, against illegal detentions, is subsumed to the appeal at the request of *habeas corpus* , provided for in article 220, als. c) and d), of CPPenal. And rightly, the "a quo" court ordered the immediate release of four people who were illegally deprived of their liberty. ii.** Secondly, because **the request made in the appeal, proves to be impossible** . Otherwise, let's see: **11.** In fact, it is requested to validate "the mandatory confinement of applicants, **as they are carriers of the SARS-CoV-2 virus** (AH___) and because they are under active surveillance, **due to high risk exposure**, decreed by the authorities (SH__SWH__ and NK_). " **12.**

It is with great astonishment that this court is faced with such a request, especially if we take into account that the appellant is active in the health sector.

Since when is it up to a court to make clinical diagnoses, on its own initiative and based on possible test results? Or the ARS? Since when is the diagnosis of a disease made by decree or by law?

13. As the applicant has more than an obligation to know, **a diagnosis is a medical act, the sole responsibility of a doctor**.

This is what results unequivocally and peremptorily from Regulation No. 698/2019, of 5.9 (regulation that defines the doctors' own acts), published in DR.

There it is determined, in an imperative way (which requires its compliance by all, including the applicant) that (emphasis added):

Article 1

Object

This regulation defines the professional acts specific to doctors, their responsibility, autonomy and limits , within the scope of their performance.

Article 3

Qualification

1 - **The doctor is the professional legally qualified to practice medicine, qualified for the diagnosis** , treatment, prevention or recovery **of diseases and other health problems** , and able to provide care and intervene on individuals, groups of people individuals or population groups, sick or healthy, with a view to protecting, improving or maintaining their state and health level.

2 - **Doctors with current registration with the Portuguese Medical Association are the only professionals who can practice the**

doctors' own acts, under the terms of the Portuguese Medical Association's Statute, approved by Decree-Law No. 282/77, of 5 July, with the changes introduced by Law No. 117/2015, of 31 August and these regulations.
Article 6
Medical act in general
1 - **The medical act consists of diagnostic, prognostic, surveillance,** investigation, medico-legal expertise, clinical coding, clinical audit, **prescription and execution** of pharmacological and non-therapeutic measures. Pharmacological, **medical**, surgical and rehabilitation **techniques,** health promotion and disease prevention in all its dimensions, namely physical, mental and social of people, population groups or communities, while respecting the deontological values of the medical profession. Article 7 Diagnostic act **The identification of a disorder, disease or the state of a disease by studying its symptoms and signs and analyzing the tests performed is a basic health procedure that must be performed by a doctor and, in each specific area , by a specialist doctor** and aims to establish the best preventive, surgical, pharmacological, non-pharmacological or rehabilitation therapy. **14.** Even under the Mental Health Law, Law no. 36/98, of 24 July, the diagnosis of the pathology that can lead to compulsory internment is mandatorily performed by specialist doctors and their technical and scientific judgment - inherent clinical-psychiatric evaluation - it is subtracted from the judge's free assessment (see articles 13, 3, 16 and 17 of the said Law). **15. Thus, any diagnosis or any act of health surveillance (as is the case of determining the existence of viral infection and high risk of exposure, which are shown to be covered by these concepts) made without prior medical observation to applicants, without the intervention of a doctor enrolled in the OM (that proceeded to the evaluation of its signs and symptoms, as well as the examinations that it deemed appropriate to its condition), violates such Regulation, as well as the provisions of article 97 of the Order of the Doctors, and it is possible to configure the crime P. and p. by art. 358 al.b) (Usurpation of functions) of C.Penal, if dictated by someone who does not have such quality, that is, who is not a doctor enrolled in the Ordem dos Médicos.** It also violates Article 6 (1) of the Universal Declaration on Bioethics and Human Rights, which Portugal subscribed to and is internally and externally obliged to respect, since no document proving that the informed consent had been given to the file is shown. Declaration imposes. **It is thus clear that the prescription of auxiliary diagnostic methods (as is the case with tests for the detection of viral infection), as well as the diagnosis of the existence of a disease, in relation to any and all people, is a matter that cannot be carried out by Law, Resolution, Decree, Regulation or any other normative way, as these**

are acts that our legal system reserves to the exclusive competence of a doctor, being sure that, in advising his patient, he should always try to obtain the your informed consent. 16. In the case we are dealing with, there is no indication or evidence that such a diagnosis was actually carried out by a professional qualified under the Law and who had acted in accordance with good medical practices. **Indeed, what follows from the facts taken for granted, is that none of the applicants was even seen by a doctor, which is frankly inexplicable, given the alleged seriousness of the infection. 17.** In fact, the only element that appears in the proven facts in this regard is the performance of RT-PCR tests, one of which presented a positive result in relation to one of the applicants. **i.** However, in view of the current scientific evidence, this test is, in itself, incapable of determining, beyond reasonable doubt, that such positivity corresponds, in fact, to the infection of a person by the SARS-CoV-2 virus, by several reasons, of which we highlight two (to which the issue of *gold standard is added,* which, due to its specificity, we will not even address): For this reliability depend on the number of cycles that make up the test; For this reliability depend on the amount of viral load present. **ii.** Indeed, the RT-PCR (polymerase chain reaction) tests, molecular biology tests that detect the RNA of the virus, commonly used in Portugal to test and enumerate the number of infected (after nasopharyngeal collection), are performed by amplifying samples , through repetitive cycles. The number of cycles of such amplification results in the greater or lesser reliability of such tests. **iii. And the problem is that this reliability is shown, in terms of scientific evidence (and in this field, the judge will have to rely on the knowledge of experts in the field) more than debatable.** This is the result, among others, of the very recent and comprehensive *Correlation* study *between 3790 q PCR positives samples and positive cell cultures including 1941 SARS-CoV-2 isolates* , by Rita Jaafar, Sarah Aherfi, Nathalie Wurtz, Clio Grimaldier, Van Thuan Hoang, Philippe Colson, Didier Raoult, Bernard La Scola, Clinical Infectious Diseases, ciaa1491,https://doi.org/10.1093/cid/ciaa1491,em https://academic.oup.com/cid/advance-article/doi/10.1093 / cid / ciaa1491 / 5912603 , published at the end of September this year, by *Oxford Academic* , carried out by a group that brings together some of the greatest European and world experts in the field. This study concludes [2] , in free translation: "At a cycle threshold (ct) of 25, about 70% of the samples remain positive in cell culture (ie they were infected): in a ct of 30, 20 % of samples remained positive; in a ct of 35, 3% of the samples remained positive; and in a ct above 35, no sample remained positive (infectious) in cell culture (see diagram). This means that if a person has a positive PCR test at a cycle threshold of 35 or higher (as in most laboratories in the USA and Europe), the chances of a person being infected are less than 3%.

The probability that the person will receive a false positive is 97% or higher ". **iv.** What follows from these studies is simple - **the possible reliability of the PCR tests carried out depends, from the outset, on the threshold of amplification cycles that they support,** in such a way that, up to the limit of 25 cycles, the reliability of the test will be about 70%; if 30 cycles are carried out, the degree of reliability drops to 20%; if 35 cycles are reached, the degree of reliability will be 3%. **v.** However, in the present case, **the number of amplification cycles with which PCR tests are carried out in Portugal, including the Azores and Madeira, is unknown,** since we were unable to find any recommendation or limit in this regard. **saw.** In turn, in a very recent study by Elena Surkova, Vladyslav Nikolayevskyy and Francis Drobniewski, accessible athttps://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30453-7/fulltext, published in the equally prestigious *The Lancet, Respiratory Medicine* , it refers (in addition to the multiple questions that the precision of the test itself raises, regarding the specific detection of the sars-cov virus 2, due to strong doubts about the fulfillment of the so-called *gold standard*) that (free translation): "Any diagnostic test **must be interpreted in the context of the actual possibility of the disease, existing before its realization** . For Covid-19, this decision to perform the test depends on the previous assessment of the existence of symptoms, previous medical history of Covid 19 or the presence of antibodies, any potential exposure to this disease and no likelihood of another possible diagnosis. " [3] " One of the potential reasons for presenting positive results may be the prolonged shedding of viral RNA, which is known to extend for weeks after recovery, in those who were previously exposed to SARS-CoV-2. **However, and more relevantly, there are no scientific data to suggest that low levels of viral RNA by RT-PCR equate to infection, unless the presence of infectious viral particles has been confirmed by laboratory culture methods**. In summary, Covid-19 tests that show false positives are increasingly likely, in the current epidemiological climate panorama in the United Kingdom, with substantial personal, health and social system consequences. " [4] **18. Thus, with so many scientific doubts expressed by experts in the field, which are the ones that matter here, as to the reliability of such tests, ignoring the parameters of their performance and having no diagnosis made by a doctor, in the sense of the existence of infection and risk, it would never be possible for this court to determine that AH___ had the SARS-CoV-2 virus, nor that SH__SWH__ and NK_ had had high risk exposure. 19.** In a final summary, it will be said that, since the appeal filed is inadmissible, due to lack of legitimacy and lack of interest in acting by the applicant, as well as manifestly unfounded, it will have to be rejected, under of the provisions of articles 401 nº1 al. a), 417 nº6 al. b) and artº420 nº1 als. a) and b), all of the Penal CP. **iv - decision.** In view of the

above, and under the provisions of articles 417, paragraph 6, al. b) and 420 nº1 als. a) and b), both of the Penal Procedure Code, the appeal filed by the **REGIONAL HEALTH AUTHORITY,** represented by the Regional Directorate of Health of the Autonomous Region of the Azores , is rejected .Under the terms of paragraph 3 of article 420 of the CPPenal, the applicant is condemned in the procedural sanction of 4 UCs, as well as in the TJ of 4 UCs and costs. Immediately inform the court "a quo" of the content of this judgment. Lisbon, **November 11, 2020** Margarida Ramos de Almeida Ana Paramés [1]

[1] 2 - It is the responsibility of each ARS, IP, within the scope of their respective territorial circumscriptions: a) To implement the national health policy, in accordance with the global and sectoral policies, aiming at their rational organization and the optimization of resources; b) Participate in the definition of intersectoral planning coordination measures, with the objective of improving healthcare provision; c) Collaborate in the preparation of the National Health Plan and monitor its implementation at regional level; d) Develop and encourage activities in the field of public health, in order to guarantee the protection and promotion of the health of the populations; e) Ensure the execution of local intervention programs aimed at reducing the consumption of psychoactive substances, preventing addictive behaviors and reducing dependencies; f) Develop, consolidate and participate in the management of the National Integrated Continuing Care Network according to the defined guidelines; g) Ensure the regional planning of human, financial and material resources, including the execution of the necessary investment projects, of the institutions and services providing health care, supervising their allocation; h) To prepare, in accordance with the guidelines defined at national level, the list of facilities and equipment; i) To allocate, in accordance with the guidelines defined by the Central Administration of the Health System, IP, financial resources to institutions and services providing healthcare integrated or financed by the National Health Service and to private entities with or without profit making , who provide health care or act within the areas referred to in points e) and f); j) To celebrate, monitor and review contracts in the scope of public-private partnerships, in accordance with the guidelines defined by the Central Administration of the Health System, IP, and allocate the respective financial resources; l) Negotiate, conclude and monitor, in accordance with the guidelines defined at national level, contracts, protocols and conventions of a regional scope, as well as carry out the respective evaluation and review, in the scope of healthcare provision as well as in the areas referred to in points e) and f); m) Guide, provide technical support and evaluate the performance of health care institutions and services, in accordance with the defined policies and guidelines and regulations issued by the competent central services and bodies in the different areas of intervention; n) To ensure the proper articulation between the health care services in order to guarantee compliance with the referral network; o) To allocate financial resources, through the signing, monitoring and review of contracts within the scope of integrated continuous care; p) Elaborate functional programs of health establishments; q) Licensing private units providing health care and units in the area of addictions and addictive behaviors in the social and private sector; r) Issue opinions on master plans for health units, as well as on the creation, modification and merger of services; s) Issue opinions on the acquisition and expropriation of land and buildings for the installation of health services, as well as on projects of the facilities of health care providers. [2] *"that at a cycle threshold (ct) of 25, about 70% of samples remained positive in cell culture (ie were infectious); at a ct of 30, 20% of samples remained positive; at a ct of 35, 3% of samples remained positive; and at a ct above 35, no sample remained positive (infectious) in cell culture (see diagram)* ***This means that if a person gets a "positive" PCR test result at a cycle threshold of 35 or higher*** *(as applied in most US labs and many European labs),* ***the chance that the person is infectious is less than 3%. The chance that the person received a "false positive" result is 97% or higher.*** [3] Any diagnostic test result should be interpreted in the context of the pretest probability of disease. For COVID-19, the pretest probability assessment includes symptoms, previous medical history of COVID-19 or presence of antibodies, any potential exposure to COVID-19, and likelihood of an alternative diagnosis.1 When low pretest probability exists, positive results should be interpreted with caution and a second specimen tested for confirmation. [4] Prolonged viral RNA shedding, which is known to last for weeks after recovery, can be a potential reason for positive swab tests in those previously exposed to SARS-CoV-2. However, importantly, no data suggests that detection of low levels of viral RNA by RT-

PCR equates with infectivity unless infectious virus particles have been confirmed with laboratory culture based methods .7 To summarize, false-positive COVID-19 swab test results might be increasingly likely in the current epidemiological climate in the UK, with substantial consequences at the personal, health system, and societal levels (panel)