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20.7T8PDL.
L1-3

Reporter: MARGARIDA RAMOS DE ALMEIDA
Descriptors: HABEAS CORPUS
INTEREST IN ACTING
SARS-COV-2 RT-PCR TESTS
DEPRIVATION OF
ILLEGAL DETENTION

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

Procedural Medium: CRIMINAL RESOURCES
Decision: Denied Provision

Summary: the diagnosis of the existence of , as these are acts that our legal system reserves to the exclusive competence of doctor this test is gold standard is which we highlight two of the patients and without the intervention of a physician enrolled in the OM (who proceeded to assess their signs and symptoms, as well as the tests that they deemed appropriate to their condition), violates Regulation No. 698/2019, of 5.9, as well as the provisions of article 97 of the Statute of the Order of Physicians, being to configure the crime of liable usurpation of functions, p. and p. by article 358 al.b), of C.Penal. will be the diagnosis of the existence of , as these are acts that our legal system reserves to the exclusive competence of doctor This test is Which we highlight two Any diagnosis or any act of

Partial Text Decision:

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

*** I - report 1.** By decision of 26-08-2020, the request *for habeas corpus formulated* was

granted, because it was illegal to arrest, determining the immediate restitution of the freedom **of applicants SH__SWH__, AH__ and NK__. two.**

REGIONAL HEALTH AUTHORITY, represented by the Regional Health Directorate of the Autonomous Region of the Azores, then appealed against such a decision, asking the final to validate the mandatory confinement of applicants, because 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 health authorities (SH__, SWH__ and NK__). 4.

5.

6.

II - previous point.

Since the appeal brought by the applicant must be rejected, the court shall, in accordance with Article 420 (1) (a) and Article 420 (2) and Article 420 (2) of the Code of Criminal Procedure, sum marily specify the reasons for the decision.

III - rationale.

1.

Facts established:

1. On 01/08/2020 the applicants arrived on the island of São Miguel, coming by plane from the Federal Republic of Germany, where, in the 72 (seventy-two) hours before arrival, they had carried out 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 07/08/2020 and already during their stay on the island of São Miguel, the applicants AH___ and NK___ conducted 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___ conducted a second test to COVID19. 4.No 08/08/2020 the AH___ applicant was, by telephone, informed that her test carried out the day before had accused "detected". 5.From that day 8/8/2020 the applicant AH___ ceased to cohabit with the remaining three applicants, having always maintained a distance of no less than 2 (two) meters from them. 6.No 08/10/2020 applicants SH___, SWH___ and NK___ were informed by telephone that their tests had accused "negative".

7.No 10/08/2020 was sent to all applicants, by e-mail, the document joins fls. 25, 25verso, 26 and 26 verso, 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 / Disease COVID - 19, and two annexes (only one of them in English) and in which it reads (content equal to the exception of the identification of each of the applicants): "Isolation (...) Notification of Prophylactic Isolation Coronavirus SARS- CoV-2 / COVID disease - 19 Mário Viveiros Silva Lagoa Health Authority

Pursuant to Normative Circulars Ns DRSCINF / 2020/22 of 2 03/25/2020 and DRS CNORM2020 / 39B of 2020/08/04 of the REGIONAL HEALTH AUTHORITY (attached) and Standard No. 015/2020, 24/07/2020 of the Directorate General of Health (attached) determine the PROPHYLACTIC ISOLATION OF (...) Holder of the Citizen Card / PASSPORT No. . Until ... with the social security identification number for the period 08/08/2020 to 22/08/2020 due to the danger of contagion and as a containment measure of COVID 19 (SARS-Cov-2) Date 2020/08 / 10 (...) 8.The Applicants requested that they send the said results, and the test report made to the Applicants AH___ and NK___ was sent

by e-mail on 13/08/2020 and to the Applicants SH___ and SWH___ yesterday, 24/08/2020, by e-mail, reports written in Portuguese. 9.Between

August 1st and 14th the applicants were accommodated in the Marina Mar II accommodation, in Vila Franca do Campo. 10. From August 14 onwards the applicants are accommodated in "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 for AH___. - In room 506 is the applicant NK_____.

11.Applicants have tried at least 3 times to contact the telephone helpline they know (296 249 220) to be informed in their language or at least in English, but have never had any success, since they only serve and respond in portuguese, which applicants do not understand. 12.In the hotel, meals are delivered to the hotel by hotel services at predetermined times and according to a choice made by a third party, unless during the first 3 days at the Lynce Hotel where breakfasts and other meals were served through room service. 13. On August 15, while complying with the prophylactic isolation determined by the Health Delegate, the AH___ began to suffer from an inflammation in the mouth, apparently resulting from the dental appliance she uses.

14.Having, by telephone, 296 249 220, shared this situation with the Regional Health Authority, who requested the necessary medical support. 15.This request was ignored by that helpline, which did not provide the AH___ the necessary support. 16.Not looking for any support, two days later, on August 17, properly protected by mask and gloves, the applicant SWH___ left her room, went to the pharmacy closest to the hotel, where she acquired an ointment to temporarily deface the situation referred to, having returned immediately to the hotel and her room. 17.No 19/08/2020 was sent by the Health Delegate, Dr. JMS___, to the Applicants e-mail, which reads in particular:

"(...) The AH___ is only given as cured after having a negative test and a 2nd negative cure test, when this happens the health delegation will contact (...) (sic). 18.No 21/08/2020 was transmitted to the four applicants, by Health Delegate Dr. JMS___, by email the following message: "I eg When they are finished the quarantine they have to test and if this is negative they can leave the house" (sic). 19.On that same day 21 August the SH___ applicant questioned the said doctor and Health Delegate, Dr. JMS___, by e-mail which he sent, the following (translated into Portuguese in free regime): "Dear Dr. JMS___, We have already done

two COVID tests / person, all were negative (SH___, SWH___, NK___). .. and after that we spent 2 weeks in isolation, and none of us accuses any symptoms !! We have Dr. MMS___, confirm. No one told us anything about the new tests after the isolation time ?! We have already rebooked our flights and planned to leave the island. Explain the reason for your statement. Why wasn't the COVID test of AH___? Greetings, SH___ " 20.Applicants have not received any response to this email message, with the exception of Applicant AH___ who have been informed of a new screening test schedule for the next 29/08/2020.

21.No 20/08/2020 the applicant AH___ carried out a third test to COVID19, having the following day (21/08/2020), only by telephone, was informed that the result had accused "detected". 22.Applicant AH___ requested that she be sent written evidence of this positive result, which was sent to her via email on yesterday, 08/24/2020. 23.The Applicants questioned the staff at the reception of the hotel where they are located, and were told that none of the four applicants, without exception, may be absent from the rooms. 24.Applicants do not have, or have never presented, any symptom of the disease (fever, cough, muscle ado, sneezing, lack of smell or palate). 25.The applicants did not explain the content of the two documents sent to them with the writings listed in paragraph 7.

26.Applicants are habitually resident in the Federal Republic of Germany, identified in these cases.

Reasoning: The

question that arises here, on the basis that applicants are deprived of their freedom (from 10 August to the present date, as is apparent from the facts established) and, consequently, being able to help the present habeas corpus institute - as we will now expose - it is redirected as to whether or not there is a legal basis for this deprivation of liberty. *Without even questioning the organic constitutionality of Council Resolution of the Regional Government No 207/2020, of 31 July 2020, currently in force under the procedures approved by the Government of the Azores in the containment of the spread of the SARS-COV-2 virus in this Autonomous Region*, in the situation under question the detention / confinement of applicants since august 10 is materialized by a communication made by e-mail, in Portuguese, in accordance with the data as proven under paragraph 7.

As is apparent from point 7 of the facts established, the regional health

authority, by means of the respective Health Delegate of the territorial area where the Applicants were staying, determined their prophylactic isolation under Normative Circulars No DRSCINF / 2020/22 of 03/2025 / 2020 and DRS CNORM2020 / 39B of 08/04/2020 of the REGIONAL HEALTH AUTHORITY and Standard No. 015/2020 of 07/24/2020 of the General Health Directorate. And, it was through a communication with the aforementioned support, it should be emphasized, in normative circulars and a standard of the General Directorate of Health, that the Regional Health Authority deprived applicants of their freedom, because the facts proved derive satiety that they, in the rigor of the concepts, were detained from 10 to 14 August 2020 in a hotel development in Vila Franca do Campo and from August 14, 2020 to date confined, and therefore detained, in a hotel room in this city of Ponta Delgada. We cannot overlook, not least because it emerges from the list of the facts proved, that the power of movement and the right of mobility of the Applicants - or any other individual who is in the same situation - are so limited that the first exit from the rooms where they were to go to this court and make statements (with the exception of the trip to the pharmacy of the SWH___ in clear despair to help the pains of his daughter in the proven terms).

In summary, analyzing the actuality of the fact that it is inexorable to conclude that we are faced with a real deprivation of the applicants' personal and physical freedom, which is not consented to by them, which prevents them not only from moving, but also from being in the family, living for about 16 days apart (the applicants SH___ and SWH___ and their daughter, here Applicant, AH___) and, in the case of the NK___ applicant entirely alone, without any physical contact with anyone. To say that there is no deprivation of liberty because at any time they can leave their rooms, in which they are in a fallacy, just pay to the communications made to them after August 10, none of them in the German language, and the conditions in which they have lived (not neglecting that they are foreign citizens with the inherent language barrier) or requesting their return to the place of origin is a fallacy, and, for this conclusion, just take into note the last communications made in

Portuguese, it should be stressed that the evidence d 's evidence is highlighted under point 8, in particular "That is, when they are finished the quarantine they have to test and if this is negative they can leave the house as the hotel where they are confined . in 3 rooms Therefore, with the Applicants deprived of their freedom, in the face of the circumstances proven, it is Necessary to trace the path in Which We moves, beginning the journey through the central lighthouse of the Portuguese legislative system: The Constitution of the Portuguese Republic.

Thus, in the hierarchy of norms, it should be recalled that, as provided for in Article 1 of the PRC, "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 and solidary society. " It follows unequivocally that the unity of meaning in which our system of fundamental rights is rooted is rooted in human dignity - the principle of the dignity of the human person is the axial reference of the whole system of fundamental rights.

One of them, of the most relevant attention to its structuring nature of the democratic state itself, is the principle of equality, article 13 of the PRC, where it is provided, in paragraph 1, that "All citizens have the same social dignity and are equal before the law. ", adding paragraph 2, that" No one may be privileged, benefited, harmed, deprived of any right or exempt from any duty on grounds of descent, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social condition or sexual orientation. "

And, as far as this particular matters, under the epigraph "right to freedom and security" provides article 27 (1) of the PRC, "Everyone has the right to freedom and security", referring to José Lobo Moutinho, in a note to such an article, that "Freedom is an absolutely decisive and essential moment - not to say, the very and constitutive way of being - of the human person (Ac. no 607/03:" ontic requirement "), which lends it that dignity on which the Portuguese legal (and, first and foremost, legal-constitutional) order (Article 1 of the Constitution) finds its granite basis. In that sense, the cornerstone of the social building can be said "(Ac. no. 1166 / 96) "(aut.cit., In op. Cit., P. 637).

Since human freedom is not one-dimensional, and may take on multiple dimensions, such as Articles 37 and 41, of the CRP, the freedom at issue in Article 27, is physical freedom, understood as freedom of corporeal movement, to come and go , ambulatory freedom or locomotion, providing in paragraph 2 of this last article that "No one may be totally or partially deprived of liberty, unless as a result of a judicial sentence condemned by the practice of act punishable by law with imprisonment or judicial application of security

Exceptions to this principle are listed in paragraph 3, which provides that: "* Except from this principle the deprivation of liberty, for the **a) Detention in flagrante delicto;** **(b) detention or pre-trial detention for strong** evidence of the commission of a crime corresponding to imprisonment with a maximum limit of more than three years; **(c) arrest, detention or other coercive measure subject to judicial review of a person who has penetrated or remains irregularly in the** national territory or against whom extradition or expulsion proceedings are in progression; **d) Disciplinary arrest imposed on military personnel, with a guarantee of appeal to the Court competent;*

***(e) subjection of a minor to measures of protection, assistance or education in an appropriate establishment, ordered by the competent judicial court; (f) detention by judicial decision by reason of disobedience to the decision taken by a court or to ensure the appearance before the competent judicial authority; (g) the arrest of suspects, for identification purposes, in cases and for the time strictly necessary; (h) hospitalization of a patient with a psychic anomaly in an appropriate therapeutic establishment, decreed or confirmed by a competent judicial authority. "* Finally, it should be recalled that, if there is deprivation of liberty against the provisions of the Constitution and the Law , the State is**

constituted in the duty to indemnify the injured party in

according with the terms established by law, as is apparent from Article 27 (5), emphasizing that, in accordance with Article 3 of the PRC: (...) 2. The State shall be bound by the Constitution and shall be founded on democratic legality. 3. The validity of the laws and other acts of the State, the autonomous regions, local authority and any other public entities shall depend on their compliance with the Constitution. Here arrived, traced the legal territory, let's take a closer look at the picture in which the Regional Health Authority moved in the situation under analysis. Applicants SH__SWH__ and NK_ performed a screening test for the SARS-CoV-2 virus, the result

of which was negative for all, resulting in the same positive test for Applicant AH___, which led to the aforactic isolation order and consequent permanence of these in the terms exposed and proven. For that, in view of the content of the notification made to the Applicants, this court cannot fail to express, ab initio, its perplexity at the determination of prophylactic isolation to the four Applicants. As follows from the definition given by the Directorate General of Health, "Quarantine and isolation are essential social removal measures in public health. They are especially used in response to an epidemic and aim to protect the population from transmission between people. The difference between quarantine and isolation is part of the disease status of the person who wants to be socially estranged.

"quarantine is used in people who are supposed to be healthy but may have been in contact with an infected patient; isolation is the measure used in sick people, so that through social removal they do not infect other citizens." (in <https://www.sns24.gov.pt/tema/doencas-infecciosas/covid-19/isolamento/?fbclid=IwAR34hD77oLCpxUVYJ9Ol4ttgwo4tsTOvPfla3Uyo h0EJEbCs3jEihkaEPAY#sec-0>).

In the present case, the Regional Health Authority decided to make a shallow plank of essential concepts, because they delimit the differentiated treatment (because different, pass the pleonasmus), the situations of people infected and those who were in contact with them, before the order of prophylactic isolation to all applicants, although only one of them has positive results to the alluded test of despiste. More over the decision, to make the final letter of the Government Council Resolution No. 207/2020 of 31 July, with the mandatory submission of the competent court ordered to be mandatory quarantine, when it derives from the satiety of the facts established that applicants SH__SWH__ and NK___, at best, are subject to mandatory quarantine. It did not do so within the 24 hours provided for in paragraph 6 of that Resolution, not even within a longer period - as in the 48 hours provided for in Article 254 (1) (a) of

the Code of Criminal Procedure, or in Article 26 (2) of the LSM - and therefore the clear restriction of the freedom of applicants SH__SWH__ and NK_ will always be illegal. In this step, the aforementioned Resolution of the Council of the Government No. 207/2020 of 31 July 2020 provides in paragraph 4 that in the case of the result of the sars-cov-2 virus test being positive, the local health authority, within its competences, will determine the procedures to be followed. The Applicant AH___ positive test on the screening test of the virus concerned, has been notified, reiterated 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 must be made clear that the notification made as proven under paragraph 7 is brought from what is contained in the Standard of DGS015 / 2020, a rule to which it is alluded to in addition to the normative circulars (available for consultation in <https://www.dgs.pt/directrizes-da-dgs/normas-e-circulares-normativas/norma-n-0152020-de-24072020-pdf.aspx>), and tells us, as far as this is concerned: (...) Contacts with High Risk Exposure 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 other locally defined place, by the Health Authority, by the end of the active surveillance period, according to the model of Orders No. 2836-A / 2020 and / or no. 3103-A / 20202

(model accessible in http://www.seg-social.pt/documents/10152/16819997/GIT_70.docx/e6940795-8bd0-4fad-b850-ce9e05d80283)

Following this standard of the General Directorate of Health, it reads, among the others , the normative circular No. DRSCNORM / 2020 / 39B, 2020-08-04 (available for consultation in http://www.azores.gov.pt/NR/rdonlyres/25F80DC1-51E6-4447-8A38-19529975760/1125135/CN39B_signed1.pdf), (...) a.Close high-risk contacts Near high-risk contacts are treated as suspicious cases up to the laboratory result of the suspicious case. These close contacts should screen for SARS-CoV-2. High-risk contacts are considered: i. Cohabitation with confirmed case of COVID-19; (...) ii. Close Contact Surveillance and Control

3. Close contacts at high risk, given that the incubation period of the disease is currently estimated (time elapsed from exposure to the virus to the onset of symptoms) between 1 and 14 days, they should comply with 14 days of prophylactic isolation, even if they have negative screening tests during that period, and should be tested on the 14th day. If the test result on the 14th day is negative, they are discharged. If close high-risk contacts cohabit with the positive case, they should only be discharged when determining the cure of the positive

case, and their prophylactic isolation should be extended. (...) 13. *Compliance with prophylactic isolation All persons identified as a suspected case, until negative results are known, comply with prophylactic isolation;*

All people who tested positive for Covid-19 and who are discharged after a cure test (hospitalization or home), do not need to perform a new 14-day isolation period or repeat a new test on the 14th day.

All passengers landing at airports in the Region from airports located in areas considered to be active Community transmission zones or with active transmission chains of the SARS-CoV-2 virus shall comply with the procedures in force in the Region at the time.

Here, we analyze the legal value of norms /guidelines of the General Directorate of Health and the normative circular 39B, 08/04/2020, of the Regional Health Directorate, with no doubts left that

In this regard, with the specificity of referring to the Tax Authority - which has the same administrative legal position as the National Health Authority in the state-ius imperium, CASALTA NABAIS (Tax Law, 6th ed., Almedina, p. 197), "the so-called administrative guidelines, traditionally presented in various forms such as instructions, circulars, circular offices, circular offices, normative orders, regulations, opinions, etc.", which are very frequent in tax law constitute "internal regulations which, because they are addressed only to the tax administration, this should only be obeyed, and therefore mandatory only for the bodies located hierarchically below the body of the same.

That is why they are not binding on individuals or courts. And this is whether it is organizational regulations, which defines rules applicable to the internal functioning of the tax administration, creating working methods or modes of action, whether interpretive regulations, which interpret legal (or regulatory) precepts. It is certain that they densify, explain or develop the legal precepts, defining in advance the content of the acts to be performed by the administration at the time of their application. But that doesn't make them a standard validity of the acts they endure. In fact, the assessment of the legality of the acts of the tax administration must be carried out by direct confrontation with the corresponding legal rule and not with the rules of procedure, which has been brought between the rule and the act ".

However, the problem of the normative relevance of the Circulars of the Administration (Tax) has already been put and assessed in the Judgments of the Constitutional Court No. 583/2009 and 42/14, 18.11.2009 and 09.012.2014, respectively, and that Court decided, with what we agree, that the requirements contained in the Circulars of the 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 pointed out in that arrest (Judgment 583/2009) "(...) These acts, in which the" circulars "are large, emanate from the power of self-organization and

the hierarchical power of the Administration. They contain generic work orders and that is why and only in their subjective scope (of the hierarchical relationship) that they have ensured observance. They incorporate guidelines for future action, transmitted in writing to all subordinates of the administrative authority that issued them. These are standardized decision-making modes, which are designed to rationalize and simplify the functioning of services. It is worth saying that, although they indirectly can protect legal certainty and ensure equal treatment through uniform enforcement of the law, they do not regulate the matter on which they are in confrontation with individuals, nor are they a rule of decision for the courts. " Consequently, lacking in the right binding force for individuals and not imposing on the judge only for the doctrinal value they may possess, the requirements contained in the "circulars" of the not constitute rules for the purposes of the constitutionality control system of the jurisdiction of the Constitutional Court.

What is said, it allows us to conclude that the administrative guidelines conveyed in the form of a normative circular, as in the present case, do not constitute provisions of legislative value that may be the subject of a declaration of formal unconstitutionality - see Judgment of the Supreme Administrative Court of 06/21/2017, available for consultation in . And, to make it clear that the regulations invoked by the Regional Health Authority that supported the deprivation of liberty imposed on Applicants by reporting prophylactic isolation are non-binding administrative guidelines for Applicants.

Normative Circular No. DRSCNORM / 2020 / 39B: "For: Health Units of the Regional Health Service, Delegates of Health Concelhios (C / c Regional Civil Protection Service and Firefighters of the Azores, Azores Health Line) Subject: Screenings for SRAS-CoV -2 and approach of suspected or confirmed cases of Infection by SARS-CoV-2 Source: Regional Health Directorate (...) Standard 015/2020, of 24/07/2020: "SUBJECT: COVID-19: Contact Tracking KEYWORDS: Coronavirus, SARS-CoV-2, COVID-19, Contact Tracing, Epidemiological Investigation FOR: Health System (...). In this sequence, and, in the sound of synthesis, this court cannot fail to stress that the

present case, let us say aberrant, of deprivation of liberty of persons, absolutely lacks any legal basis, and does not come again with the 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 hospitalization, because of the factuality established and the foregoing results:

- Applicants are confined to the space of a quarter for about 16 days, based on a notification of "prophylactic isolation" until 08/22/2020, period that has already been exceeded and the notification operated, which in any case is illegal as a means of detaining persons for the reasons already explained (just pay to the constitutional rules set out above), has lapsed;*
- Applicants have never been provided with any information, communication, notification, as*

due, in their mother tongue, nor has they been made available to them in flagrant violation of the European Convention *on Human Rights (Art 5, paragraph 2 and 6 (3) and criminal procedural rules (see Art. 92 of the Criminal Procedure Code)*, ie in our legal system held a foreign person without mastery of the Portuguese language is immediately appointed an interpreter, and in the case of Applicants who have merely traveled to this island and enjoy its beauty, they have never been granted such a possibility; - Applicants after 08/22/2020 are confined to the space of a room on the basis of the following communications: - On 08/19/2020 was sent by the Health Delegate, Dr. JMS____, to the E-mail Applicants, which reads in particular: "(...) The AH____ is only given as cured after having a negative test and a 2nd negative cure test, when this happens the health delegation will contact (...) (sic). - On 21 / 08/2020,

the following message was transmitted to the four applicants, by Health Delegate Dr. JMS____, by e-mail: "Ie, when they are finished the quarantine they have to test and if this is negative they can leave the house" (sic); - *The deprivation of liberty of applicants has not been subject to any judicial review.*

As we said initially, we could also consider the organic constitutionality of Government Council Resolution No. 1207/2020 of 31 June, however, we believe that it is a matter of disdain for the purpose of the decision to be delivered, that it is necessary to speed, because even in the light of such a resolution the decision cannot be different, based on the decision of the Constitutional Court of 7/31/2020, in the context of Case No 424/2020, and, because the position of the Regional Health Authority in the present circumstances is re-applied to normative circulars, with the value we have explained above.

Finally, and because this court has been ruling successively and recently within the framework of this *habeas corpus institute in the face of the orders emanating from the Regional Health Authority*, we allow ourselves to subscribe and underline the following excerpt from the first decision of this Criminal Instruction 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 in Article 27 (3) of the PRC, in particular in point (h), where only the hospitalization of a person with a psychic anomaly in an appropriate therapeutic establishment, decreed or confirmed by a competent judicial authority, is provided for. is urgent to legislate on this matter, clearly establishing the fundamental principles to which it must comply, leaving the detailed aspects to secondary law - and only those. For, as Professor Gian Luigi Gatta says, which we quote here in a free translation, "at this moment, the energies of the country are focused on the emergency. (in" I diritti fondamentali alla proof of the coronavirus. Perché a legge sulla quarantena ",) is necessary". It will not be difficult to accept and accept that the legislative turbulence generated

around the containment of the spread of COVID-19 has had – and will continue to have – in its reason for protecting public health, but this

turbulence can never hurt the right to freedom and security and, ultimately, the absolute right to human dignity.

***It remains to be decided accordingly.** (...) Therefore, in the light of the foregoing, the detention of applicants SH__SWH__, AH__ and NK__ is unlawful, i decide to upstate the present application for habeas corpus and, consequently, determine the immediate restitution of them for freedom. 2.*

The 1.The present appeal concerns

the decision given by the Court a quo considered that "unlawful the detention of applicants SH__SWH__, AH__ and NK__" and decided to "upholding this application for habeas corpus and, consequently, determine the immediate refund of them to freedom.";

2.Only for the sake of procedural economy, that is to say, because it is of little material for assessing the merits of the case, it is not used against the factuality given as evidenced, but it does not fail to mention that it was based solely on the applicants' own statements.

3.The decision under appeal that the applicant failed to comply with point 6 of the Council Resolution of the Regional Government of the Azores No 207/2020 of 31 July 2020 infringed the scope of the resolution, defined in point 1 of the same Resolution; 4.The mandatory quarantine judicial validation provided for in point 6 of that resolution applies only to mandatory quarantine ordered to passengers who do not accept, alternatively, any of the procedures provided for in point 1 of that Resolution;

5.Applicants have complied with the procedure laid down in point 1 (a) of Resolution ° 207/2020 of 31 July 2020 and could never be subject to mandatory quarantine under that Resolution and, consequently, there is no judicial validation provided for in paragraph 6 of Resolution No 207/2020 of 31 July 2020. 6. Contrary to that advocated in the foregoing decision, the Portuguese legal order allows the adoption of measures of exception, including separation of persons, consequently ordering the compulsory confinement of infected persons 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 has legitimately made use of the exceptional regulatory power provided for in Article 17 of Law No 81/2009, through Council of Ministers Resolutions No 55-A / 2020 of 31 July 2020 and No 63-A / 2020 of 14 August;

8. Paragraph 2 of Council of Ministers Resolution No 55-A / 2020 of 31 July 2020 had exceptional measures necessary to be applied to the whole national territory to combat COVID-19, in particular those provided for in the scheme annexed to that resolution; 9.Article 2 of the Annex has decreed that: "Article 2 Compulsory confinement 1 - They are in compulsory confinement, in a health establishment, in their home or

elsewhere 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. 2 - (...) " 10. Applicant AH___ when infected with the SARS-CoV-2 virus, in compliance with Article 2 (1) (a) of Annex I to Council resolution 55-A / 2020, had to be in compulsory confinement; 11. The Court was to order the habeas corpus of AH___ and allow its free movement to be infringed by Article 17 of Law No 81/2009 of 21 August by reference to Article 2 (1) (a) of Annex I to Council of The Minister's Resolution No 55-A / 2020;

12. Applicants SH__SWH__ and NK_ in accordance with the rules stipulated by the National Health Authority, contained in Standard 015/2020 of 24/07/2020, are contacts with High Risk Exposure and must be subject to: a.Active surveillance for 14 days , since the date of the last exposure; b.Determination of prophylactic isolation at home or other locally defined place by the Health Authority by the end of the active surveillance period in accordance with the model of Orders No 2836-A / 2020 and / or No 3103-A / 20202 " 13. Applicants SH__SWH__ and NK_ when under active surveillance in compliance with Article 2 (1) (b) of Annex I to Council of The Minister's Resolution No 55-A / 2020 had to be in compulsory confinement;

14. The Court by declaring habeas corpus of SH__SWH__ and NK_ and allowing its free movement infringed Article 17 of Law No 81/2009 of 21 August by reference to Article 2 (1) (b) of Annex I to Council of The Council of Prime Minister No 55-A / 2020. 15. It is necessary that the abrogated decision be revoked and replaced by another which validates the compulsory confinement of applicants, because they carry the SARS -CoV-2 virus (AH___) and because they are under active surveillance, for high-risk exposure, enacted by the health authorities (SH__SWH__ and NK___). 3.

1

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 which imposed a mandatory quarantine, found that the organic rules of the rules referred to were verified. 2 - These rules, declared unconstitutional by the Constitutional Court, are all in all materially identical to those contained in Council of Ministers Resolutions No 55-A / 2020 of 31-07, 63-A / 2020, 14-08, and 70- A

9 - Article 17 of Law No 81/2009 of 21-08, which repealed Law No 2036 of 09 ° 08-1949, allows the member of the Government responsible for health to have a special regulatory power, in accordance with the provisions of base XX of Law No 48/90 of 24-08 (Basic Health Law), in particular, 'take indispensable exception measures in the event of a public health emergency, including the restriction, suspension or closure of activities or the separation of persons 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 - It is therefore foretold that it is not provided for in this Law, as laid down

the possibility of promoting the isolation or internment of persons suffering from infectious diseases. On the other hand, if the measures taken by the health authorities must comply with the Constitution and the law and not providing for the Constitutional Law to deprive the freedom of persons with infectious diseases, the interpretation to be given to *the expression 'separation of persons who are not sick, means of transport or goods, who have been exposed'*, in order to comply 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 liberty. 11 - Moreover, the current Basic Health Act - Law No 95/2019 of 04-09 - provides in Base 34, relating to the defense of public health, that the public health authority may 'b) trigger, in accordance with the Constitution and the law, the compulsory provision of health care to persons who otherwise constitute a danger to public health'. 12 - Also Law No 82/2009 of 02-04, which regulates the legal regime of the designation, competence and functioning of entities exercising the power of health authorities, provides in article 5 for the powers of the health authority, in particular 'c) To trigger, in accordance with the Constitution and the law, the compulsory care of individuals in a situation of harm to public health'.

13 - It is taken from this that, if the measures taken by the health authorities must comply with the Constitution and the law, and the Constitutional Law does not provide for the deprivation of liberty of persons with infectious diseases, if the interpretation to be given to *the expression 'hospitalization or compulsory provision of health care to individuals in a situation of harm to public health'* is to order the hospitalstay, or another measure restricting freedom of movement, or the compulsory provision of health care for persons with infectious diseases, such an interpretation of the law is materially unconstitutional for breach of Article 27 (1) of the CRP.

14 - Defining Law No 27/2006 of 03-07 (Civil Protection Basics Act) "Serious accident" as an unusual event with relatively limited effects on time and space, which may affect persons and other living beings, property or the environment, but by establishing in Article 5 (1) (al. a), the principle of the public interest priority relating to civil protection in relation to 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 relating to civil protection, so they are not included in the concepts of "serious accident" and "catastrophe" referred to in Art. 3 of the Civil Protection Act.

15 - 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 founded on the Basic Law on Civil Protection to declare "the situation of contingency and alertness, in the context of the COVID-19 disease pandemic", in particular The Council of Minister's Resolutions No 55-A /

2020 of 31-07, 63-A / 2020, 14-08, 68-A / 2020, 28-08, and 70- A / 2020 of 11-09 - repealed by Council of Ministers Resolution No 88-A / 2020, 14-10, currently in force —which provide in paragraph 2 for 'compulsory confinement, in a health establishment, at home or elsewhere 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 Act does not apply to situations of danger to

16- We can, conclude, therefore, that The Council of Ministers' Resolutions No 55-A / 2020 of 31-07, 63-A / 2020, 14-08, 68-A / 2020, 28-08, 81/2020, 29-09 - repealed by Council of Ministers Resolution No 88-A / 2020, 14-10, currently in force, and its Annex, which were issued by the Government, in the use of administrative powers, have created a restricting the freedom regime of citizens with infectious diseases (quarantines, prophylactic isolations, etc.) and, in order to strengthen the application of deprivation of liberty not permitted by the Constitution or provided for by law enabling situations of people with a contagious disease or danger to public health, they have established the commission of a crime of disobedience for such violations and the aggravation of the penalty provided for such a *crime, directly infringes Article 27 (1) of the CRP, and therefore, as unconstitutional, they must be misapplied in the present case, unlike the applicant's request, 17 - While the sub judice decision is maintained. 4.*

It determines Decree-Law No. 11/93, of 1993-01-15, in its current version (Statute of the National Health Service) that (under

our emphasis): Article 1 The National Health Service,

is an orderly and hierarchical set of institutions and official services **providing health care, operating under the oversight or guardianship of the Minister of Health.** Article

31 - The NHS is organised in health regions.

2 - Health regions are divided into health sub-regions, integrated by health areas.

Article 61 -

In each

2 - The ARS have legal personality, administrative and financial autonomy and their own assets.

3 - The ARS have functions of planning, distribution of resources, guidance and coordination of activities, management of human resources, technical and administrative support and also evaluation of the functioning of institutions and services providing health care.

4 - (...).

For its part, decree-law no. 22/2012

Article 1.1

- The Regional Health Administrations, IP, abbreviated ly referred to as , IP, **are public institutes integrated in the indirect administration of the State**, endowed with administrative, financial autonomy and their own assets. two -

3 - The ARS, IP, are governed by the rules contained in this decree-law,

the provisions of the framework law of public institutes and the Statute of the National Health Service and the other rules applicable to

Article 31

- The ARS, IP, has the mission of ensuring the population of their geographical area of intervention access to the provision of health care, by adhering to the resources available to the needs and complying with and complying with health policies and programs in their area of intervention.

2 - The duties of each ARS, IP, within the respective territorial circumscriptions are:

- a) To implement the national health policy, in accordance with global and sectoral policies, aiming at its rational ordering and the optimization of resources;
- (b) participate in the definition of cross-sectoral planning coordination measures, with the aim of improving the provision of health care;
- c) Collaborate in the preparation of the National Health Plan and monitor its implementation at regional level;
- (d) develop and promote public health activities in order to ensure the protection and promotion of the health of populations;
- (e) ensure the implementation of local intervention programs with a view to reducing the consumption of psychoactive substances, preventing addictive behavior and reducing dependencies;
- f) Develop, consolidate and participate in the management of the National Integrated Continuing Care Network in accordance with the guidelines defined;
- (g) ensure regional planning of human, financial and material resources, including the implementation of the necessary investment projects, of healthcare institutions and services, by supervising their allocation;
- (h) draw up, in line with the guidelines defined at national level, the charter of facilities and equipment;
- (i) allocate, in accordance with the guidelines defined by the Central Administration of the Health System, IP, financial resources to healthcare institutions and services integrated or financed by the National Health Service and to private entities with or without profit, which provide health care or act within the areas referred to in points (e) and (f);
- j) Conclude, monitor and review contracts within the framework of public-private partnerships, in accordance with the guidelines defined by the Central Administration of the Health System, IP, and affect their financial resources;
- (l) negotiate, conclude and monitor, in accordance with the guidelines defined at national level, regional contracts, protocols and conventions, as well as to carry out their assessment and review, in the context 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 policies defined and the guidelines and regulations issued by the relevant central services and bodies in the various policy areas;
- n) Ensure the proper articulation between health care providers in order to ensure compliance with the referral network;
- (o) allocate financial resources by concluding, monitoring and revising

- contracts in the framework of integrated continuing care;
- p) Develop functional programs of health facilities;
 - (q) licensing private health care units and units in the area of dependencies and addictive social and private behavior;
 - (r) issue opinions on health unit master plans, 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 - For the purposes of their tasks, the ARS, IP, may collaborate with each other and with other public or private sector entities, with or without profit, in accordance with the legislation in force.

5.

habeas corpus order is part of article **220 of the CPPenal, which** has the following wording: **Habeas corpus** due to illegal detention 1 - Detainees at the order of any authority may request the investigating judge of the area

a) The deadline for surrender to

application referred to in the preceding paragraphs or to its referral to the competent judge.

(b) the accused and the assistant of decisions given against them;

(c) the civil parties, on the part of the decisions against each one given;

(d) those who have been ordered to pay any sums under this Code or have to defend a right affected by the decision.

two

The first question here is that of the applicant's legitimacy in the event of an appeal in criminal proceedings. **i.** We are in the context of a criminal jurisdiction, whose purpose is to ensure the of the State, that **is, which is dedicated to the investigation and decision in relation to conduct constituting a crime or misdemeanor.**

It is, in this context and attentive to this purpose, that the Law determines who has legitimacy to be able to discuss the goodness of a decision given by a criminal court.

In the present case, we find that the applicant is not a defendant, is not an assistant and has not made any request of a civil nature which, in the light of the principle of the applicant, would determine the position of claimant or defendant. **iii.** Thus, before the Law and in view of the list of interveners which the legislature considered to be entitled to intervene in a case in this type of jurisdiction, on appeal, we must first conclude that the applicant lacks legitimacy to be able to discuss the content of a judicial decision in this context. **iv.** In fact, the commission of any crime or any illegal of a counter-orderational nature is not discussed here,

and it is true that the question of possible criminal consequences, the recognition of the existence of an illegal detention, is a matter that must be discussed in its own position - that is, in an investigation that will be opened to that end, being completely foreign to the decision of

the present case. **V. v.** We therefore conclude that the applicant lacks the legitimacy to appeal against the decision given by the court 'a quo'. **8.** In theis of the question of legitimacy, it is also noted that the applicant also lacks an interest in taking action. **i.** As is apparent from peaceful jurisprudence and doctrine in this regard, the interest in acting means the

need for someone to have to use the appeal mechanism as a means of reacting against a decision which would disadvantage

ii. In the present case, the question is - has the decision given entail any disadvantage to the interests which ARS defends? Or your legitimate expectation or benefit? The answer is manifestly negative.

ARS continues

Thus, and in the first place, both in view of the functions assigned to it and in the light of their manifest hierarchy, before the guardianship, it must be concluded that no ARS pursues an own and autonomous interest, which it fulfills its protection. Who will continue it, eventually, will be the respective Minister or the Government in which it is part, because the "interests" of the ARS will not be yours, but will be included in the health policy of the ministry that oversees such entity.

that in the definition of its tasks it is not determined to provide any specific defense function, autonomously and in its own name, in court, of any interests which fall within its functions which, with regard

iv. For its part, the applicant's own interest in defending and which is in the application at the end of this appeal - the validation of the compulsory confinement of applicants, because they carry the SARS -CoV-2 virus (AH___) and because they are under active surveillance, for high-risk exposure, ordered by the health authorities (SH__SWH__ and NK___) - is contradictory in itself and goes beyond the purpose and scope of a criminal court. **Contradictory because the applicant does not accept that confinement corresponds to deprivation of liberty. If so, it is not envisaged in which the applicant founded the jurisdiction of a criminal court to validate "confinements".** And outside the scope of action of a criminal court, because it is not responsible for making declarative decisions to validate infections or diseases ... **v.** Finally, it is not seen that legitimate expectation or benefit has an entity under the tutelage of a government body, **seen frustrated, by the decision now put in criticism.**

I saw. It follows from that it has no interest in acting, which is why, under article **401 of Article 401 of the Criminal Commission**, it cannot appeal against the decision given.

The decision given by the court "a quo" of receipt of the present appeal does not bind this court (Art. 414 of the CPPenal), so there is nothing to prevent its rejection.

Nevertheless, and for peace and quiet consciences, the following will also be added:

the appeal presented would **be manifestly unfounded, for the following brief reasons:**

i. First of all, by the exhaustive and right-reasonset set out in the decision, by the court "a quo", the content of which is fully endorsed.

in the face of the Constitution and the Law, the health authorities do not have the power or legitimacy to deprive any person of his liberty - even under the label of "confinement", which effectively corresponds to an arrest - since such a decision can only be determined or validated by

judicial authority, that is, exclusive jurisdiction, vis-à-vis the Law that still governs us, to order or validate such deprivation of liberty, is committed exclusively to an autonomous power, to the Judiciary. It follows that any person or entity making an order, the content of other people's freedom (whatever the nomenclature that this order takes: confinement, isolation, quarantine, prophylactic safeguarding, etc.), which is not part of **the legal provisions, in particular in article 27 of the PRC and without having been granted such decision-making power, by law - derived from RA, in the strict scope** of the declaration of state of emergency or site, respected that the principle of is shown - that the mandate and **specifies the terms and conditions of such deprivation** , is making an **illegal detention, because ordered by an incompetent entity and because motivated by the fact** by which the law does not permit it (say it if, moreover, that this issue has been debated over time on other public health phenomena, in particular with regard to HIV and tuberculosis infection, for example. And, as it is known, no one has ever been deprived of their freedom, out of suspicion or certainty of suffering from such diseases, precisely because the Law does not allow it). It is in this context that the situation under consideration in this case is part of the situation under consideration, and it is certain that the appropriate means of defence, against illegal detentions, is subsumed to the appeal of **habeas corpus**, provided for in Article 220, als.c) and d), of the C.P.Penal. And, correctly, **the "a quo" court ordered the immediate release of four people who were illegally deprived of liberty.**

ii. the application made in the appeal itself proves to be impossible to give origin.

If not, let's see: 11.

applicants be validated, because they carry the SARS-CoV-2 virus because they are under active surveillance, for **high-risk** exposure, decreed by the health authorities (SH__SWH__ and NK_). " 12. **It is with great astonishment that that court is faced with such a request, especially if we take into account that the applicant carries out its activity in the health sector.**

Thirty-three.

diagnosis is a medical act, the sole responsibility of a doctor.

This is clear and peremptorily apparent from Regulation No 698/2019, of 5.9 (regulation defining the doctors' own acts), published in DR. It is imperative (which requires its acknowledgment so) that (emphasis underlined): Article 1 Object

This Regulation defines the professional acts proper to doctors, their responsibility, autonomy and limits, in the context of their performance.

Article 3 Qualification

1 - The physician is the professional for the

treatment, prevention or recovery of diseases and other health **problems**, and able to provide care and to intervene on individuals, sets of individuals or population groups, sick or healthy, with a view to the protection, improvement or maintenance of their state and level of

health. two - **Physicians with registration in force in the Order of Physicians are the only professionals who can perform the acts of physicians, pursuant to the Statute of the Order of Physicians, approved by and this Regulation. Article 6 Medical Act in general**

The medical act consists of

prognostic, **surveillance**, research, medical-legal expertise, clinical coding, clinical auditing, **prescription and execution of pharmacological** and non-pharmacological therapeutic measures, **medical** techniques, surgical and rehabilitation, health promotion and disease prevention in all its dimensions, namely physical, mental and social of people, population groups or communities, with respect for the ethical values of the medical profession. Article 7 Diagnostic Act The identification of a disorder, disease or the state of a disease by the study of its symptoms and signs and analysis of the examinations carried out constitutes a basic procedure in health which must be carried out by a doctor and, in each specific area, by a specialist physician and aims at the institution of the best

Even under the Mental Health Law, Law No. 36/98 of July 24, the diagnosis of the pathology that can lead to compulsory hospitalization, is mandatorily performed by medical specialists and its technical-scientific judgment - inherent to the clinical-psychiatric evaluation - is subtracted from the judge's free assessment (see Articles 13 no. 3, 16 and 17 of said Law). who does not have such quality, that is, who is not a doctor enrolled in the Order of Physicians. It also **violates article 6 (1) of the Universal Declaration on Bioethics and Human Rights, which Portugal has subscribed to and is internally and externally obliged to respect**, since no document proving that the informed consent that this Declaration imposes is shown in the record.

In the case of us, there is no indication or evidence that such a diagnosis was actually made by a qualified professional in accordance with the Law and who had acted in accordance with good medical practice. Indeed, what stems from the facts given as settled is that none of the applicants were even seen by a doctor, which is frankly inexplicable, in the face of the invoked severity of the infection.

17. In fact, the only factor contained in the facts found in that regard is the performance one of which has tested positive for one of the applicants. i. In the light of the current scientific evidence, this test alone proves which we highlight two (to which the question of gold standard is added **its specificity**, we will not even address): Because of this reliability depends on the number of cycles that make up the test; **For this reliability depend on the amount of viral load present.**

ii. In fact, RT-PCR (Polymerase Chain Reaction) tests, molecular biology tests that detect RNA virus, commonly used in Portugal to test and enumerate the number of infected (after nasopharyngeal collection), are performed by amplification of 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 help himself from the

knowledge of experts in the matter) more than debatable.

This is the result, among others, of the very recent and comprehensive correlation between 3790 qPCR positives samples and positive cell cultures including 1941 SARS-CoV-2 isolates, by Rita

<https://academic.oup.com/cid/advance->

[article/doi/10.1093/cid/ciaa1491/5912603](https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1491/5912603), published at the end of September this year **Oxford Academic**, conducted by a group that brings together some of the

In this "At a cycle threshold (ct) of 25, about 70% of the samples remained positive in cell culture (ie they were infected): at a ct of 30, 20% of the 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 is the case in most laboratories in the US and Europe), the probabilities of a person being infected are less than 3%. The probability of the person receiving a false positive is 97% or higher. "

iv. [What is resulting from these studies is simple](#) - the possible reliability of the PCR tests performed depends, from the outset, on the threshold of amplification cycles that they have, so

However, in the present case,

since we could not find any recommendation or **limit in that regard. I saw**. In turn, in a very recent study by Elena Surkova, Vladyslav Nikolayevskyy and Francis Drobniowski, accessible

, **published in the equally prestigious** The Lancet, Respiratory Medicinerefers (in addition to the multiple questions that the accuracy of the test itself **raises, as regards the specific detection of the sars-cov 2 virus, for strong** doubts as to compliance with the so-called gold standard)

"Any diagnostic test must be [interpreted in the context of the current possibility of the disease, existing before its realization](#) . According to Covid-19, this decision to perform the test depends on the previous evaluation of the existence of symptoms, previous medical history of Covid 19 or presence of antibodies, any potential exposure to this disease and not likelihood of another possible diagnosis. "

*"One of the potential reasons for the presentation of positive results may lie in the prolonged spillof 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 is no scientific data to suggest that low levels of rt-pcr viral RNA equivalent the infection unless the presence of infectious viral particles has been confirmed by laboratory culture methods. In short, Covid-19tests that call for false positives are increasingly likely in the current uk epidemiological climate landscape, with substantial personal consequences for the health and corporate system. " **18. Thus, there are 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 that there is 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___ was carrier of the SARS-CoV-2 virus, nor that SH__SWH__ and NK_ had had high risk exposure.

19. In final summary, it will be said that, since the action brought is inadmissible, for lack of legitimacy and lack of interest in acting on the part of the applicant, and manifestly unfounded, it must be rejected, under Article 401 (1) (a). b) and artº420 nº1 als. a) and b), all of the CP Penal. iv - decision.

the appeal brought by **the REGIONAL HEALTH AUTHORITY, represented by the** Regional Health Directorate of the Autonomous Region of the **rejected.**

Pursuant to Article 420(3) of the C.P.Penal, the applicant is condemned in the procedural penalty of 4 UC, as well as in the T.J. of 4 UC and in the costs.

Please give the a quo to the court immediately of the content of this judgment.

Lisbon, 11 November 2020 Margarida Ramos de Almeida Ana Paramés ___I. P., within the respective territorial constituencies: a) Implement the national health policy, in accordance with global and sectoral policies, aiming at its rational ordering and the optimization of resources;

(e) ensure the implementation of local intervention programs with a view to reducing the consumption of psychoactive substances, preventing addictive behavior and reducing dependencies;

the implementation of the necessary investment projects, of healthcare institutions and services, by supervising their allocation;

carry out their assessment and review, in the context of healthcare provision as well as in the areas referred to in points (e) and (f);

of health care institutions and services, in accordance with the policies defined and the guidelines and regulations issued by the relevant central services and bodies in the various policy areas;

of dependencies and addictive social and private behavior;

as on projects of the facilities of health care providers.

(as applied in most US labs and many European labs), the chance that the person is infectious is less than

The

^[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 for confirmation.

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).