



# CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 5 October 2023

in Case No. 2022-34-01

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

with the participation of the representative of the applicants, twenty Members of the 13<sup>th</sup> convocation of the *Saeima*: Andrejs Klementjevs, Nikolajs Kabanovs, Artūrs Rubiks, Regīna Ločmele, Edgars Kucins, Vladimirs Nikonovs, Zenta Tretjaka, Jānis Krišāns, Jānis Tutins, Inga Goldberga, Igors Pimenovs, Vitālijs Orlovs, Sergejs Dolgopolovs, Valērijs Agešins, Boriss Čilevičs, Karina Sprūde, Ivans Ribakovs, Ivans Klementjevs and Ļubova Švecova, Andrejs Klementjevs, as well as authorised representative Regīna Ločmele and sworn advocate Inese Nikuļceva,

the authorised representative of the institution, which issued the contested acts, the *Saeima*, sworn advocate Sandis Bērtaitis,

with Laura Stutāne as the secretary of the court hearing,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 1 of Section 16, Para 3 of Section 17 (1) and Section 28 of Constitutional Court Law,

on 28 August and 5 September 2023, at an open court hearing, with the participants in the case present, reviewed the case

**“On Compliance of Section 33 (1) of Law on Social Services and Social Assistance and the Second and the Third Part of Section 2<sup>2</sup> of the Law “On**

**Social Security” with Article 1 and Article 109 of the Constitution of the Republic of Latvia”.**

**The Facts**

1. On 7 September 1995, the *Saeima* adopted the law “On Social Security” (hereafter – Social Security Law), which entered into effect on 5 October 1995. Whereas on 31 October 2002, the *Saeima* adopted Law on Social Services and Social Assistance (hereafter – Social Assistance Law), which entered into effect on 1 January 2003.

1.1. On 24 November 2020, the *Saeima* adopted the law “Amendments to Law on Social Services and Social Assistance” and the law “Amendments to the law “On Social Security””, which entered into effect on 1 January 2021 (hereafter also – Amendments of 2020). By Amendments of 2020, Section 33 (1) of Social Assistance Law was expressed in the following wording:

“The guaranteed minimum income threshold shall be EUR 109 for the first or only person in a household and EUR 76 for other persons in the household.”

Pursuant to Section 34 of the said law, the minimum income thresholds are reviewed in procedure set out in Social Security Law.

Section 2<sup>2</sup>, in turn, was added to Social Security Law, the second and third part of which provided:

“(2) The minimum income threshold shall not be lower than EUR 109.

(3) The minimum income thresholds shall be reviewed at least every three years.”

1.2. On 8 March 2023, the *Saeima* adopted the law “Amendments to Law on Social Services and Social Assistance”, which entered into effect on 1 June 2023, and the law “Amendments to the Law “On Social Security””, which entered into effect on 1 July 2023 (hereafter also – Amendments of 2023). By Amendments of 2023, Section 33 of Social Assistance Law was expressed in the following wording:

“(1) The minimum income thresholds for providing social assistance shall be determined as a percentage, rounded up to whole euros, from the median

minimum income per one equivalent consumer per month, published on the website of the Central Statistical Bureau (hereafter – the median income).

(2) The guaranteed minimum income threshold shall be 20 percent of the median income.

[..]”

Para 53 of Transitional Provisions of Social Assistance Law provides that the amendment regarding expressing Section 33 of this law in new wording enters into force on 1 July 2023.

The second and the third part of Section 2<sup>2</sup> of Social Security Law has been expressed in the following wording:

“(2) The minimum income threshold shall not be lower than 20 percent (rounded up to whole euros) of the median minimum income per one equivalent consumer per month published on the website of the Central Statistical Bureau (hereafter – the median income). Until February 1 of the current year, the Central Statistical Bureau shall publish the current median income on its website, and it shall be used as a basis for determining the minimum income threshold for the following year.

(3) The minimum income thresholds shall be reviewed at the same time every year on January 1, taking into account the current median income. If the current median income does not change or decreases in the reporting year, the minimum income thresholds shall remain at the previously determined amount.”

Pursuant to Transitional Provision of the said law, in 2023, the minimum income thresholds, determined in Section 2<sup>2</sup> of this law, shall be reviewed on 1 July, taking into account the median income for the year of 2020, published on the website of the Central Statistical Bureau.

**2. The applicant – twenty Members of the 13<sup>th</sup> convocation of the Saeima** (hereafter – the Applicant) – holds that the contested provisions are incompatible with Article 1 and Article 109 of the Constitution of the Republic of Latvia (hereafter – the Constitution).

It is stated in the application that the State’s obligation to ensure such level of social assistance for providing for a person’s basic needs so that everyone could live life worthy of human dignity and maintain the status of a full-fledged member

of society followed from Article 109 of the Constitution, in conjunction with the principle of a socially responsible State, included in Article 1 of the Constitution. Moreover, the legislator should review the amount of social assistance regularly.

The legislator has established a social security system and decided on the most relevant matters related to determination of the minimum income threshold. However, it is maintained that the legislator has failed to fulfil the obligation to review the amount of social assistance regularly, on the basis of a method that follows from the purpose of protecting human dignity and level out social inequality, as well as to ensure to every person in need the possibility to live such a life that is worthy of human dignity.

The Applicant notes that, pursuant to Amendments of 2020, the legislator has the right but not the obligation to review the minimum income threshold at least once in three years. Allegedly, this means that the minimum income threshold may be determined by taking account data on the median income that are five or even more years old. During this time, the socioeconomic situation has changed significantly. The frequency of reviewing the minimum income threshold should be such that would ensure that the determined threshold complies with the socioeconomic reality. Reviewing once in three years, allegedly, does not reach the aim of ensuring its conformity with a person's socioeconomic situation at the moment when they need social assistance. This means worsening of needy persons' situation and increasing income inequality.

In Amendments of 2020, the minimum income thresholds have been set out as a specific amount of money. The method used to determine these has not been indicated. The relative method, used to determine the threshold, is said to be reflected in the annotations to draft law, which, further, are not binding upon the *Saeima*. Although the minimum income thresholds have been determined on the basis of socioeconomic indicator, i.e., the median income, it is impossible to ascertain that this amount is such, which, pursuant to scientific and statistical data, would be sufficient to provide for the basic needs on such a level that would allow living a life worthy of human dignity.

The Applicants are of the opinion that the minimum income threshold continues to be unacceptably low and does not ensure to every needy person the possibility to live a fulfilling life. It is contended that the legislator has the

obligation to determine such minimum income threshold that would really allow, taking into account the economic situation and the level of the costs of living, a person to satisfy their basic needs for food, clothing, household items and equipment, housing, medical assistance, basic education, participation in political, cultural and sports life, to move, receive information and communicate with other persons, receive legal aid, etc., and, thus, ensure to them the status of a full-fledged member of society. The minimum income threshold is said to be lower than the food basket of minimum subsistence. The assumption that, in assessing the sufficiency of this threshold for satisfying a person's basic needs, the support that private persons voluntarily provide to persons in need should be taken into account, cannot be upheld. It is hard for persons in need to cover the costs of maintaining housing, part of them are unable to afford proper food and health care services, as well as purchase medicines. Likewise, means for cultural, leisure, sports and similar activities are lacking. The minimum income threshold is said to be incompatible with the principle that the protection of a child's rights and interests takes the priority. In Latvia, both the cost of living and society's prosperity is said to be growing rapidly. The prices of goods and services needed to satisfy one's basic needs have increased significantly. Moreover, the State is able to provide greater support.

The Applicant points out that the *Saeima*, in adopting the contested provisions, intentionally has not taken into account the conclusions made in the Constitutional Court's judgement of 25 June 2020 in case No. 2019-24-03, the judgement of 9 July 2020 in case No. 2019-27-03, as well as the judgement of 16 July 2020 in case No. 2019-25-03 (hereafter – judgements in cases No. 2019-24-03, No. 2019-27-03 and No. 2019-25-03) regarding the legislator's obligations in determining the minimum income thresholds. Thus, the principle of good legislation has been violated.

At the court hearing, the Applicant's representative noted additionally that Amendments of 2023 had introduced only unsubstantial changes to the contested provisions, the method for determining the minimum income threshold still did not envisage sufficiently regular review of this threshold, allegedly, this method had not been scientifically substantiated and, hence, could not ensure standard of living worthy of human dignity. The Applicant's representative underscored that the

purpose of determining the minimum income threshold was to provide for a person's basic needs at a specific moment, which could not be achieved by using data that were outdated by several years. The response to changes in the costs of living should be fast. The minimum income threshold does not cover even the costs of food, not to mention other basic needs. It is contended that the *Saeima* is not enforcing the previous judgements by the Constitutional Court and, thus, is violating the principle of good legislation.

At the court hearing, the Applicant's representative specified the claim and requested the Constitutional Court to examine whether Section 33 (1) of Social Assistance Law and the second and third part of Section 2<sup>2</sup> of Social Security Law, in the wording that was in effect from 1 January 2021 until 30 June 2023, (hereafter – the initially contested provisions) and the first and the second part of Section 33 of Social Assistance Law and the second and third part of Section 2<sup>2</sup> of Social Security Law, in the wording that is in effect from 1 July 2023, (hereafter – the new contested provisions) complied with the Constitution.

**3. The institution that issued the contested acts –the *Saeima*** – holds that the contested provisions comply with Article 1 and Article 109 of the Constitution.

The *Saeima* notes in its written reply that the legislator had identified precisely the case-law of the Constitutional Court, on the basis of which the contested provisions had been adopted. It is maintained that the legislator's actions comply with the principle of good legislation.

The *Saeima* holds that it has acted in compliance with the findings, enshrined in the Constitutional Court's case law. The fact that Section 2<sup>2</sup> (3) of Social Security Law permits reviewing the minimum income threshold once in three years could not be the grounds for presuming that the review would be passive and approximated to the term of three years. Reviewing can be done more frequently. Moreover, such circumstances are said to be possible that decrease the need to review the minimum income threshold once annually, e.g., economic recession. The Constitutional Court has placed the greatest importance not upon the terms for reviewing the minimum income threshold but upon the method and criteria used to determine this threshold. The contested provisions should be reviewed in conjunction with other regulatory acts and actions taken by authorities.

By the contested provisions of Amendments of 2020, the *Saeima* itself had determined the minimum income threshold for providing social assistance, on the basis of a method approved by the *Saeima*, and had envisaged procedure for reviewing it. The *Saeima* had specified the purpose of social assistance, linking it to the need to ensure support on the level of minimum income threshold, as well as had decided on several other essential matters. The *Saeima* had tried to level out social injustice by determining the same minimum support to households with low income in all municipalities.

The Constitutional Court has imposed an obligation upon the *Saeima* to define a method and criteria for determining the minimum income threshold but not to enshrine it *expressis verbis* in the law. Allegedly, both the methodology and criteria applicable to determination of the minimum social assistance can be enshrined also in the annotation to the draft law.

The lowest minimum income threshold, expressed in specific amount of money, which had to be reviewed regularly had been determined in the initially contested provisions. The methodology had been reflected in the annotation to Amendments of 2020. The minimum income threshold has been determined by applying the relative method, which is based on the actual socioeconomic situation in the state. The minimum social assistance is determined as a constant proportion of the median income, which is determined by applying the methodology of the survey “The European Union statistics on income and living conditions” (EU-SILC) (hereafter – Survey Methodology). The proportion – 20 percent from the median income – is said to conform to the practice accepted in the majority of the Members States of the European Union. The minimum income threshold for the first and the only person in a household has been determined in full and in a proportionally smaller amount for other persons. The applied methodology is said to be scientifically and statistically valid, linked to socioeconomic indicators and based upon the most current data on the economic situation in the state.

The *Saeima* had been aware of the need to ensure a balance between persons’ needs and the society’s possibilities. Although Latvia, according to the indicators of its economic growth, ranks as one of the lowest in the European Union, the *Saeima*, in determining the minimum income threshold, had used a methodological approach, recognised in Europe, and had envisaged the lowest

possible level of support, following the practice implemented in the majority of Member States. Allegedly, this approach proves that the legislator had tried to ensure the minimum social assistance on as acceptable level as possible. The respective methodology has been developed and the threshold determined by assessing it together with the whole system of social security. Amendments of 2020 also introduced uniform legal regulation on ensuring a housing benefit, preventing a situation where municipalities applied different approaches to determining the respective support. Thus, this had facilitated decreasing of socioeconomic inequality and the risk of poverty.

The *Saeima* points out that, with the socioeconomic situation in the state changing, the median income also can change and, accordingly, also the minimum income threshold. The regulation, which has statistical and mathematical basis, is said to ensure that the financially capable majority of society supports the societal minority, i.e., persons with low income. The relative method allows setting a threshold that is compatible with the economic reality at the particular moment.

The *Saeima* underscores that the provisions that were contested initially had to be elaborated in urgent procedure, alongside elaboration of the State budget, to enforce the Constitutional Court's judgement. Identifying the risks and the need to continue research regarding the methodology for determining and reviewing the minimum income threshold, the regulation, included in the initially contested provisions, has not been amended. The fact that the *Saeima* has not reviewed the minimum income threshold in 2021 *per se* is not indicative of the unlawful nature of the initially contested provisions.

In the additional explanations and at the court hearing, the *Saeima's* representative noted that the relative method prevented political impact on determining the minimum income threshold. The procedure for determining the minimum income threshold, included in the contested provisions, is said to be compatible with the requirements of Para 1 of Article 13 of the Revised European Social Charter. The minimum income threshold should be assessed together with the other support measures of the social security system. In general, the guaranteed minimum income benefit and the housing benefit, alongside the support measures provided by the Fund for European Aid to the Most Deprived (hereafter – the Fund for Aid) (sets of food, hygiene and household goods and sets of school supplies)

are said to be considerably larger and exceed 40 percent of the median income. The minimum income threshold should be commensurate, lower than the minimum old-age pension to prevent the risk of not paying taxes. A person's active involvement is said to be the foundation of social assistance. The majority of the recipients of the guaranteed minimum income benefit are able-bodied persons who have the possibility to ensure minimum subsistence for themselves. Social assistance is support that should not decrease persons' motivation to participate in the labour market and gain income.

At the court hearing, the representative of the *Saeima* noted that, with the new contested provisions entering into effect, the legal circumstances of the case had changed significantly and that was the grounds for terminating legal proceedings.

**4. The summoned person – the Ministry of Justice** – holds that the initially contested provisions are incompatible with Article 1 and Article 109 of the Constitution.

Annotation to a draft law cannot replace a regulatory enactment in the case where the legislator has the obligation to regulate a matter that follows from the fundamental rights, enshrined in the Constitution. The method for determining the minimum income threshold, included in the annotation, is not binding either for the legislator itself or for the executive power. It is contended that such regulation ensures neither the adequacy of the minimum income threshold nor the sustainability of the legal regulation.

The fact that the minimum income threshold is reviewed at least once in three years means that the support might be provided on the basis of such socioeconomic situation that had existed six years ago. Such approach to the provision of support cannot create significant impact upon decreasing poverty and income inequality, as well as changes to the income level of the most needy inhabitants.

The linking of the minimum income threshold to the median income is connected not only to determining the income threshold of needy and low-income households but also to State benefits and pensions, as well as other allowances determined by the State and local governments. Social insurance contributions is

an important factor that should be taken into account in determining the minimum income threshold. To retain the motivation of participants of the State social insurance system to make contributions and not to create less favourable conditions to those making the compulsory State social insurance contributions for a long term, the minimum income threshold as a proportional amount of the median income should be assessed also in the context a of those minimum income thresholds that had formed for people from the social insurance contributions made during their working life and the length of service. All of this should be examined also in the context of the sustainability of the system for social protection.

At the court hearing, the representative of the Ministry of Justice noted that the new contested provisions eliminated the deficiencies that previously had been identified by the Constitutional Court. No direct connection between the method for determining the minimum income threshold and life worthy of human dignity exists. In the long-term, the procedure for determining the minimum income threshold is directed towards national sustainability, linking of the minimum income threshold to objective indicators and increase thereof.

**5. The summoned person – the Ministry of Welfare – holds that the contested provisions comply with the Constitution.**

The Ministry points out that the guaranteed minimum income benefit is the last possible support provided from the State resources to inhabitants with the lowest income or without any income at all. The main purpose of this benefit is to satisfy a person's need for food, and it is one of the basic needs, defined in Social Assistance Law. Since 1 January 2021, the purpose of the guaranteed minimum income benefit has been defined in the said law, i.e., material support in monetary terms for covering the minimum daily expenses.

The basic social support benefits are said to ensure, in the minimum amount, provision for the two basic needs, defined in Social Support Law, i.e., food and housing. In assessing a person's material resources, a number of State social benefits are not deemed to be income. Thus, families, which are in situations of particular risk, have been given the possibility to receive the guaranteed minimum income benefit even if income exceeds the threshold.

The greatest proportion among the recipients of the guaranteed minimum income benefit is constituted by persons in households with children – 36 percent, whereas 25.8 percent are constituted by able-bodied persons living alone. The support ensured to these groups should be assessed by comparing it with the income that people of able-bodied age gain from salaried employment. With the difference between the income gained from social assistance and the income gained from salaried employment decreasing, the general level of employment is adversely affected. In assessing the material situation of families with children, other income and allowances related to children are not taken into account. This means that, actually, the income of such families is higher than the guaranteed minimum income benefit, disbursed to households.

The recipients of the guaranteed minimum income benefit have the possibility to receive also the support provided by the Fund for Aid. 92 percent of the recipients of the guaranteed minimum income benefit have received food parcels from the local government or charity organisations. In 2021, 99.61 percent of the persons have received the said support.

Persons of retirement age and persons with disability should not be among the recipients of the guaranteed minimum income benefit because at least 20 percent or even more of the median income have been set as the minimum amount of old-age and disability pensions. The only exception could be the cases where such persons live together with other members of the household who are, e.g., unemployed.

The recipients of the guaranteed minimum income benefit who have housing have the right to receive also the housing benefit. In 2021, on average 74.3 percent of all the recipients of the guaranteed minimum income benefit have received also the housing benefit in addition to the guaranteed minimum income benefit.

Simultaneously with the aforementioned benefits, persons may receive also benefits for covering certain costs, and this could be significant support in certain situations since they provide for other basic needs – health care, compulsory education, purchase of clothing. In 2021, 36.6 percent of the recipients of the guaranteed minimum income benefit had received also additional support from the social support system.

At the court hearing, the representative of the Ministry of Welfare noted that the minimum income threshold, which had been determined by the relative method, was socioeconomically substantiated because it, first of all, reflected the socioeconomic situation in society in general and was commensurate to the actual changes in the income of population; secondly, in the mid- and long-term, created more favourable conditions for the recipients of the benefit, in particular, in the periods of economic growth, because it reflected the increase in the remuneration for work of those employed in the economy and the general increase in the income of the population; thirdly, complied with the principle of national sustainable development because, in determining social benefits, commensurability with the national economic situation and financial possibilities was respected, as well as with the income gained from salaried work and the interests of other societal groups.

**6. The summoned person – the Ministry of Finance** – subscribes to the statements made in the *Saeima's* written reply. The Ministry of Finance holds that the issues related to policy changes, which cause the need for additional financing from the State budget, should be linked to the process of planning the State budget. The issues regarding the allocation of additional State budget resources should be examined in the process of preparing and reviewing the draft budget law, together with the submissions regarding priority measures and in accordance with the financial possibilities of the State budget.

Pursuant to the principles for drafting and adopting the State budget, in the process of preparing the State budget, the Cabinet cannot be made to allocate a certain amount of financing, without taking into account the socioeconomic forecasts of economic development and without balancing the planned expenditure among all sectors. Requirements regarding a certain amount of budget financing, included in laws, narrow the Cabinet's competence to decide on the priorities in financing the State's tasks, as well as the possibilities of the executive power to perform the State's tasks.

At the court hearing, the representative of the Ministry of Finance underscored that the state budget expenditure for social assistance should be balanced with other sectors. With respect to increasing the minimum income

threshold, it should be taken into account that the minimum amount of old-age pension might approach rapidly the average amount of pension and, hence, disproportionate budget expenditure might occur, as well as negative impact upon society's willingness to participate in the social insurance system. The determination of the regulation, included in the contested provisions, and the minimum income threshold had been adequate, commensurate with the interests of the rest of society and complied with the actual socioeconomic situation.

**7. The summoned person – the State Audit Office** – provides its written opinion on the facts that it had assessed in the performance audit “Does the national social inclusion policy achieves its targets on poverty reduction?” even before the initially contested provisions entered into effect, as well as in the course of implementing the recommendations provided in the framework of this audit.

The State Audit Office notes that the social support system in Latvia is fragmented and changes are introduced, by increasing the amount of separate benefits, without assessing the necessary changes in the context of the rest of the support system of the State and local government. The support to inhabitants with the lowest income should be assessed not solely within the framework of the guaranteed minimum income benefit but by including all types of support envisaged for the particular group. Without comprising all types of support in general, the sufficiency and compliance with life worthy of human dignity of the minimum income threshold used for calculating the respective benefit cannot be fully assessed.

At the court hearing, the representative of the State Audit Office noted that it was still impossible to assess what kind of social assistance was provided in municipalities because local governments did not keep records of this assistance. The State's support to inhabitants in need is only one part of the social assistance system. However, every person should be able to provide for their basic needs by their work. In case of justifiable reasons, the working part of society, in the name of the common good of the State, in solidarity with the most needy inhabitants and, in the name of universal moral values, provides minimum support to them.

**8. The summoned person – the Ombudsman** , in general, subscribes to the opinion expressed by the Applicant.

The Ombudsman holds that the obligation imposed upon the legislator to review regularly the minimum income threshold should be examined in interconnection with the obligation to link it to a specific socioeconomic indicator. Taking into account the significant increase in the consumer prices, the minimum income threshold is no longer compatible with the social reality and does not ensure the possibility to lead a life worthy of human dignity, thus, this threshold should be reviewed. The measures taken by the legislator for implementing social rights are said to be inappropriate.

In the course of adopting the initially contested provisions, the *Saeima* had violated the principle of good legislation, failing to abide by the findings made in the Constitutional Court's judgments. The minimum income threshold, determined in the initially contested provisions, EUR 109, in conjunction with reviewing it at least once in three years, does not reach the aim of achieving the compliance of the minimum income threshold with a person's socioeconomic situation. Hence, the legislator had failed to fulfil its obligation to review the amount of social assistance regularly.

At the court hearing, the Ombudsman's representative noted that the annual review of the minimum income threshold was more favourable than it had been before; however, the fact that data, obtained three years ago, were used caused doubts. The alternative would be annual review of the minimum income threshold on 1 July, taking into account the date published in February of the same year. In general, the Ombudsman has no objections to the use of the relative method for determining the minimum income threshold, however, it should be ensured that the amount in percentage from the median income was adequate. Twenty percent of the median income currently is, respectively, EUR 125 and EUR 87.50, which is insufficient. The legislator already has defined five basic needs – food, clothing, health care, and education. Likewise, the possibility of participating in social, cultural and political life also belongs to basic needs. Each group of basic needs comprises also such expenditure, for the covering of which social assistance support is not provided. Social assistance can be considered as being appropriate if its amount for one person is not obviously lower than the poverty threshold. In

2021, the poverty threshold had been EUR 512, whereas the amount of social assistance for one person lower almost by half – EUR 262.

### **The Findings**

9. The *Saeima* holds that legal proceedings in the case should be terminated on the basis of Para 2 of Section 29 (1) of Constitutional Court Law. I.e., the *Saeima* has adopted the Amendments of 2023, which entered into effect on 1 July 2023 and which expressed the contested provisions in new wording. The *Saeima* is of the opinion that the shortcomings, indicated by the Applicant, have been eliminated by the aforementioned amendments and the arguments presented by the Applicant are not applicable to the new regulation.

At the court hearing, the Applicant's representative, in turn, maintained the claim regarding compliance of the initially contested provisions with Article 1 and Article 109 of the Constitution, as well as, additionally, requested review of the compliance of the new contested provisions with Article 1 and Article 109 of the Constitution and to recognise all contested provisions as being void from the moment of their adoption.

Para 2 of Section 29 (1) of Constitutional Court Law provides that legal proceedings in a case may be terminated before the judgement is delivered by the Constitutional Court's judgement if the contested legal provision has become void. However, the law provides for the possibility of terminating legal provisions but not an obligation to do so. The fact that the provision that has been contested in a case has become void *per se* are not always the grounds for terminating legal proceedings (*see, for instance, Decision by the Constitutional Court of 29 March 2011 on Terminating Legal Proceedings in Case No. 2010-68-01, Para 8*).

9.1. The case has been initiated with respect to compliance of the initially contested provisions with Article 1 and Article 109 of the Constitution. By the Amendments of 2023, the initially contested provisions have been expressed in new wording. Thus, they must be recognised as being void and this could be the grounds for terminating legal proceedings. However, the Constitutional Court must ascertain whether the legal situation, created by the contested provision, has been

changed substantially. The Constitutional Court must examine whether there are no circumstances requiring reviewing the case (*see, for example, Judgement by the Constitutional Court of 29 June 2023 in Case No. 2022-31-03, Para 12.1.*).

Section 33 (1) of Social Assistance Law, in the wording that was in effect until 30 June 2023, determined the minimum income threshold in monetary terms—EUR 109 for the first or the only person in a household and EUR 76 for other persons in the household. The minimum income threshold in the aforementioned provision has been determined in accordance with the method and criteria referred to in the annotation to the draft law. Whereas Section 33 of Social Assistance Law, in the wording that is currently in effect, sets out the method and criteria for determining the minimum income threshold.

The second and the third part of Section 2<sup>2</sup> of the Social Security Law, in the wording that was in effect until 30 June 2023, determined the lower limit of the minimum income threshold – EUR 109, as well as the procedure for reviewing it – at least once in three years. Whereas the second and third part of Section 2<sup>2</sup> of Social Security Law, in the currently valid wording, determines the lowest limit of the minimum income threshold – 20 percent of the median income, as well as the procedure for reviewing this threshold – on 1 January each year, taking into account the median income.

The Constitutional Court concludes: although the legislator has amended the contested provisions, they defined and still define the procedure for determining the minimum income threshold. Thus, both the initially contested provision and the new contested provisions regulate the same legal relationships.

The Constitutional Court takes into account that it already had reviewed, whether the minimum income threshold and the average income level, according to which a person can be recognised as being needy, complied with Article 1 and Article 109 of the Constitution and recognised that determining the minimum income threshold was linked to the State's obligation to establish such a system of social security that ensured protection of human dignity, levelling out of socioeconomic differences, and sustainable national development (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 20*). The said issue is socially important and affects relevant public interests.

Hence, legal proceedings in the case should not be terminated.

**9.2.** Although, in the new contested provisions, the minimum income threshold in monetary terms has been replaced by a method for determining it, essentially, they continue regulating the procedure for determining this threshold. Previously, the minimum income threshold in monetary terms had been defined in Section 33 (1) of Social Assistance Law, currently, however, the method and criteria for determining this threshold have been included in the first and second part of Section 33 of the said law.

In view of the fact that the Applicant maintains the claim regarding the compliance of the initially contested provisions with the Constitution and the social importance of the present case in protection of human dignity, simultaneously with reviewing the compliance of the new contested provisions also the compliance of the initially contested provisions with Article 1 and Article 109 of the Constitution must be examined.

**Thus, the Constitutional Court will review the constitutionality of both the initially contested provisions and the new contested provisions.**

**10.** The Applicant requests the Constitutional Court to review the compatibility of several legal provisions with several provisions of the Constitution.

**10.1.** If the compatibility of several legal provisions with several superior legal provisions has been contested then the Court, taking into consideration the merits of the case, must determine the most effective approach to this compatibility review (*see, for example, Judgement by the Constitutional Court of 15 May 2020 in Case No. 2019-17-05, Para 13*).

Since both the initially contested provisions and the new contested provisions regulate the same legal relationships the Constitutional Court will examine the constitutionality of the initially contested provisions and the new contested provisions at the same time.

**10.2.** If the compatibility of a provision, issued in the area of social rights, with the principles included in Article 1 of the Constitution is contested simultaneously with its compliance with Article 109, compliance with Article 1 of the Constitution is usually examined in conjunction with Article 109 of the

Constitution (*see Judgement by the Constitutional Court of 29 October 2010 in Case No. 2010-17-01, Para 6.1.*).

The Applicant holds that the legislator has not respected the principle of a socially responsible State in conjunction with the fundamental right to social security, guaranteed in Article 109 of the Constitution.

In view of the arguments presented by the Applicant and materials in the case, it can be concluded that the basic matter in the case is whether the procedure for determining the minimum income threshold, included in the contested provisions, is directed at protecting human dignity and complies with the principle of a socially responsible State. Thus, the Constitutional Court will examine the compliance of the contested provisions with Article 1 of the Constitution in conjunction with Article 109 of the Constitution.

**11.** Article 1 of the Constitution provides: “Latvia is an independent democratic republic.”

The Constitutional Court has recognised that human dignity is a constitutional value of Latvia – an independent and democratic State, governed by the rule of law. The State’s obligation to ensure fair social order, decrease social differences in society, facilitate social inclusion and provide to every social group the possibility to lead a life worthy of human dignity follows from the principle of a socially responsible state, based on human dignity. Decreasing socioeconomic inequality and risks of poverty is essential from the perspective of national sustainability. The legislator’s obligation is to establish such system of social security, which is directed at protecting human dignity as the supreme value of a democratic State, governed by the rule of law, levelling out social inequality and ensuring sustainable national development (*see Judgement by the Constitutional Court of 9 July 2020 in Case No. 2019-27-03, Para 20.1., and Judgement of 10 December 2020 in Case No. 2020-07-03, Para 15.1.*).

Article 109 of the Constitution provides: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

The right to social security, falling within the scope of Article 109 of the Constitution, is one of the elements in the content of the principle of a socially

responsible State. The purpose of this right is to ensure, insofar possible, social justice and it serves to ensure to everyone the right to lead a life worthy of human dignity. Article 109 of the Constitution includes the right to stable and foreseeable, as well as effective, fair and sustainable social security (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 17.2.*). Various measures of social security, also, social assistance are to be understood as social security (*compare: Judgement by the Constitutional Court of 26 March 2004 in Case No. 2003-22-01, Para 7*).

The minimum social assistance should be such as to ensure that everyone would be able to provide for oneself food, clothing, housing and medical assistance – everything that is needed for basic survival, as well as to ensure to everyone the possibilities to exercise one’s right to basic education. Moreover, social assistance should guarantee the possibilities to participate in social, political and cultural life, thus, ensuring to everyone the status of a full-fledged member of society (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 17.3.*).

However, the principle of a socially responsible State does not exclude every person’s duty, to extent it can be reasonably expected within the limits of their abilities, to provide for oneself and one’s relative and to ensure life worthy of human dignity. If a person is unable to do it then the State has the obligation to provide social assistance, on the basis of societal solidarity. The Preamble to the Constitution also refers to cohesive society as one of the constitutional values, its foundation is formed also by solidarity, justice, honesty, and work ethics. Everyone takes care of oneself, one’s relatives and the common good of society, acting responsibly towards others and the future generations.

**Thus, Article 1 and Article 109 of the Constitution comprise the State’s obligation to provide to a person social assistance, ensuring the possibility to create life that is worthy of human dignity in the case where a person is unable to it oneself.**

12. The Applicant argues that the *Saeima*, in adopting the contested provisions, had not abided by the principle of good legislation because it has disregarded the Constitutional Court’s judgements in cases No. 2019-24-03,

No. 2019-27-03 and No. 2019-25-03, as well as the objections made by the Legal Bureau of the *Saeima* and the Ombudsman.

Pursuant to the judgements referred to, the Constitutional Court should ascertain, first and foremost, whether the legislator has taken all the necessary measures – established a system of social security – to ensure to persons the possibility to exercise their social rights (*compare: Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 17.4.*). However, the Constitutional Court concludes that, in its judgements in cases No. 2019-24-03 and No. 2019-25-03, it already has recognised that the legislator has taken the respective measures, therefore, it will not verify this separately in this judgement.

The other arguments, included in the application, on disregarding the previous judgements by the Constitutional Court are such that pertain to the contested provisions on their merits, i.e., as to whether the legislator has envisaged an appropriate method for determining the minimum income threshold and the criteria of application. Therefore, the Constitutional Court will not examine these arguments separately but will review them on their merits.

**13.** The Constitutional Court must verify whether the measures that are related to determining a needy persons right to social assistance have been implemented duly, i.e., whether the possibility has been ensured to such persons to exercise their social rights at least in the minimum scope (*see Judgement by the Constitutional Court of 16 July 2020 in Case No. 2019-25-03, Para 13*).

In the present case, to assess, whether needy persons have been ensured the right to exercise their social rights in, at least, the minimum scope, the Constitutional Court must establish:

1) whether the legislator has regulated itself the most essential matters related to the minimum income threshold;

2) whether the legislator has envisaged an objective method for determining the minimum income threshold, which is directed at protecting human dignity, level out social inequality and ensure sustainable national development;

3) whether the legislator has ensured that the minimum income threshold is regularly reviewed;

4) whether the procedure for calculating the minimum income threshold, defined in the contested provisions, together with other measures of the system of social security, provides for every needy person the possibility to create a life worthy of human (*compare: Judgement by the Constitutional Court of 16 July 2020 in Case No. 2019-25-03, Para 15 and Para 19.2*).

**14.** The Constitutional Court has underscored previously that the matters of defining the purpose of the guaranteed minimum income benefit, as well as elaboration of the methods and principles for determining the minimum income threshold are so substantial that the legislator itself has decide on them (*compare: Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 20*).

By adopting Amendments of 2020, the *Saeima* has defined in Section 32 of Social Assistance Law the purpose of social assistance – to provide material support to low-income households in order to ensure income at the level of the guaranteed minimum income threshold and cover expenses related to the use of housing, and also provide support for covering certain expenses and in situations of crisis. It is noted in the annotation to the draft law that the minimum income threshold provides an additional possibility to inhabitants with low and very low income to improve the provision for their basic needs and covering the most necessary daily expenditure. The lowest minimum income threshold in monetary terms and the period for its review were defined. It follows from the preparatory materials of the draft law that the threshold had been defined on the basis of the relative method.

Whereas, by the Amendments of 2023, it is provided in the new contested provisions that the minimum income threshold is determined as an amount in percent from the median income and it is not lower than 20 percent of it, as well as the period for reviewing the threshold is set.

The Constitutional Court does not consider as valid the Applicant's argument that the legislator should describe in the law *expressis verbis* the method for determining the minimum income threshold. Description of the method in the law is not an end in itself. The legislator's obligation to decide on the most essential matters is directed at establishing such minimum income threshold that would

allow needy persons to satisfy their basic social needs. Thus, the legislator must be aware of and assess the best method for determining the minimum income threshold. Moreover, it should be done in a way that allows everyone, including the Constitutional Court, to ascertain the appropriateness of this method. However, the form, in which the legislator expresses its will, is a matter for the legislator itself to decide on. Also in the case where a specific amount of the minimum income threshold, based on a method chosen by the legislator, is included in the law, it should be considered that the content of social rights has been concretised in the law.

The draft laws, in which the initially contested provisions had been included, were examined by the Budget and Finance (Taxation) Committee, responsible for these draft laws. The transcripts of the sittings of the *Saeima* also allow concluding that Members of the *Saeima* had discussed the method, included in the annotations to the draft laws of Amendments of 2020, and, thus, had voted for the contested provisions, being aware that the minimum income threshold had been determined by a specific method, included in the annotations to the draft laws. Thus, the *Saeima*, in adopting Amendments of 2020, as well as Amendments of 2023, had taken a specific method as the basis.

Thus, the legislator itself had identified the purpose of the social assistance and the guaranteed minimum income benefit, the method for determining the minimum income threshold and criteria for application, as well as the period of review. Accordingly, the legislator has fulfilled the obligation referred to in the previous judgement by the Constitutional Court.

**Thus, the legislator has regulated itself the most essential matters related to determining the minimum income threshold.**

**15.** The Applicant argues that the method for determining the minimum income threshold, chosen by the legislator, is not scientifically valid and does not satisfy the basic needs of persons in need.

The *Saeima*, however, notes that the threshold, included in the contested provisions, had been determined on the basis of scientifically valid methodology, which is linked to a socioeconomic indicator and founded on the most recent data on the economic situation in the state.

The Constitutional Court has recognised that the chosen method should be such as to ensure that the amount of minimum subsistence would depend on economic indicators and would be appropriate for the social reality and economic situation in the state (*compare: Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 19.2. and Para 21.2.*). The legislator should have the right to select the method for determining the minimum income threshold level, however, it should be valid and be comply with the social reality. At the court hearing, the Applicant's representative also agreed that the legislator had the right to choose the method that would be used.

Until adoption of the Amendments of 2020, the minimum income threshold for receiving social assistance was determined on the basis of political choice and taking into account the financial possibilities of the State and local governments (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 20 and Para 21.2., and Judgement of 16 July 2020 in Case No. 2019-25-03, Para 16 and Para 19*).

It follows from the materials in the case and the statements made by the representative of the *Saeima* and the Ministry of Welfare that there are two generally recognised methods for determining the minimum income threshold – the absolute and the relative one. In adopting Amendments of 2020, the relative method for determining the minimum income threshold was chosen. The annotations to these draft amendments explain that, in the relative method, the income in diverse groups of society is taken into account and, thus, the minimum income threshold is to be determined as a proportion of the median income. Thus, it is ensured that, when the economic situation in the state changes, the minimum income threshold also changes and commensurate proportion develops, in which the societal majority is financially capable of supporting the societal minority with low income. The minimum income threshold, which is not below 20 percent of the median income is said to comply with the amount of income, at which the most poor inhabitants in the majority of the European Union Member States are provided material support (*see information, available in Database of parliamentary documents, on draft laws No. 824/Lp13 “Amendments to Law on Social Services and Social Assistance” and No. 817/Lp13 “Amendments to the Law “On Social Security””. Available: saeima.lv*).

Determining the minimum income threshold according to the relative method had been planned already in 2014 when the Cabinet supported the concept document, elaborated by the Ministry of Welfare, “On Determining the Minimum Income Level”. The Bank of Latvia had identified direct and positive impact of the offered solution to persons’ income, decreasing the risks of poverty and income inequality (*see Case Materials, Vol. 1, p. 71, and annotation to the draft law No. 824/Lp13 “Amendments to Law on Social Services and Social Assistance”. Available: saeima.lv*). The Bank of Latvia, as well as several other summoned persons had pointed out already before, in the Constitutional Court’s case No. 2019-24-03, that the relative method was the most appropriate for determining the minimum social assistance since it ensured that, with the economic situation changing, this minimum also changed. The relative method allows determining a threshold that is appropriate for the economic reality in the state at the particular moment (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 19.2.*).

At the court hearing, the representative of the Ministry of Welfare stated that determination of the minimum income threshold according to the relative method ensured faster increase in income for the recipients of the benefit. Thus, this income not only compensates for the increase in the consumer price index but also facilitates increase in the welfare level of the recipients of the guaranteed minimum income benefit and society in general.

The relative method for determining the minimum income level is used also in several other Member States of the European Union (*see Concept document “On Determining the Minimum Income Level” (informative part), Riga, 2014, pp. 34 and 35*). The representative of the *Saeima* pointed out at the court hearing that the relative method was used also by the European Committee of Social Rights. It has referred to the relative method, for example, in interpreting Para 1 of Article 12 of the Revised European Social Charter (*see: Digest of the Case Law of the European Committee of Social Rights, 2018, p. 144*).

The Constitutional Court concludes that the legislator has resolved the situation that was identified in the previous judgements by the Constitutional Court, i.e., the minimum income threshold was determined on the basis of political considerations. The preparatory materials for the draft law show that the legislator,

in determining the minimum income threshold, has used as the basis methodology that is well-considered, scientifically founded and, moreover, has been recognised by the European Committee of Social Rights and several Member States of the European Union.

**Thus, the legislator has envisaged an objective method for determining the minimum income threshold, aimed at protecting human dignity, levelling out social inequality and ensuring sustainable national development.**

16. The Constitutional Court already has recognised that the legislator is obliged to review regularly the compliance of the minimum social assistance with the current level of society's development and living conditions (*compare: Judgement by the Constitutional Court of 16 July 2020 in Case No. 2019-25-03, Para 21*). This means that the minimum income threshold must be reviewed regularly in compliance with the recent data regarding the socioeconomic situation.

In determining the minimum income level, the current data on the median income are taken into consideration. It is explained in the annotation to Social Security law that the data of the survey on income and living conditions, on the basis of which the median income is calculated and the indicators of poverty and social exclusion are analysed, are obtained and analysed, using uniform approach in all Member States of the European Union, on the basis of the Survey methodology. It provides that data on income for a fixed 12 month period is obtained from households that participate in the survey and record their income. This means that data are collected, for example, for the entire year of 2018, whereas the processing of the data, correlation analysis and validation take place in 2019 but publication of the data is ensured starting with the first quarter of 2020.

Starting from 2021, Regulation (EU) 2019/1700 of the European Parliament and of the Council of 10 October 2018, establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples, amending Regulations (EC) No 808/2004, (EC) No 452/2008 and (EC) No 1338/2008 of the European Parliament and of the Council, and repealing Regulation (EC) No 1177/2003 of the European Parliament and of

the Council and Council Regulation (EC) No 577/98, defines new terms for submitting the data, aiming to ensure that the data are published as soon as possible. However, even the new regulation will allow obtaining data on the income within a particular period no sooner than after a year. Thus, the data on median income that was taken as the basis for determining the minimum income threshold for 2021, actually, were data of 2018 (*see Annotation to draft law No. 817/Lp13 “Amendments to the Law “On Social Security””. Available: saeima.lv*). At the court hearing, the representative of the *Saeima* also underscored that data processing was extended process. The representative of the Ministry of Welfare noted additionally that the Latvian Central Statistical Bureau published the data on median income in February but it was done later in other Member States of the European Union.

Thus, the Constitutional Court concludes that the most recent data that are available to the legislator in the year of review pertain to a period three years ago.

**16.1.** Amendment of 2023 to Section 2<sup>2</sup> (3) of Social Security Law provide that the minimum income threshold is reviewed every year.

Annual review of the minimum income threshold ensures that, at the moment of providing social assistance, the threshold has been determined in accordance with the data that have been obtained three years ago and it complies with the situation examined above. Accordingly, e.g., the minimum income threshold for 2024 was determined on the basis of the data obtained in 2021. It is obvious that the data that have been obtained three years ago do not reflect the socioeconomic situation at the moment when the social security support is provided.

However, it should be taken into account that the process of data acquisition and processing in accordance with the Survey’s methodology, objectively, takes a long time and, therefore, this situation is justifiable. As it was explained at the court hearing by the representative of the Ministry of Welfare, the planning of the State budget for the next year starts in March of the previous year when initial information regarding the data that are needed for calculating the State budget of the next year is submitted to the Ministry of Finance. As set out in Section 16 (2) of “Law on Budget and Financial Management”, the Minister for Finance submits

to the Cabinet the draft schedule for the preparation of the budget by 1 March of the current year. The schedules for preparing the previous state budgets show that the ministries had to submit the initial information for preparing the draft basic budget by May of the respective year (*see, for example, the Cabinet's Order of 25 March 2021 No. 207 "On the draft law "On the Medium-term Budget Framework for 2022, 2023 and 2024 "* and *annex to the draft law "On the State Budget for 2022" on the schedule of preparation, and Order of 17 March 2023 No. 130 "On the schedule for the preparation of draft law "On the State Budget for 2024 and the Budget Framework for 2024, 2025 and 2026"* ). Thus, every spring, the Ministry of Welfare submits to the Minister of Finance information on the expenditure of the next fiscal year in connection with the minimum income threshold and this information is based on the data that have been published in February of the same year. Hence, in reviewing the minimum income threshold, the legislator uses the most recent data on the median income that are available to it.

The Applicant points out that reviewing of the minimum income threshold once per year does not ensure compliance of the social assistance with the socioeconomic situation. The Applicant's representative noted that the reviewing could be done once in six months. The Ministry of Finance had stated previously that the actual review of the minimum income threshold on 1 July should be conducted on the basis of assumptions regarding the required additional financing (*see Informative report of the Ministry of Finance "On Proposals for State Budget Revenues and Expenses for 2021 and Framework for the Year 2021-2023"*. Available: [tap.mk.gov.lv](http://tap.mk.gov.lv)). At the court hearing, the representative of the Ministry of Finance underscored that budget planning should be based on actually credible data. This means that the current published median income should be taken into account. Otherwise, a situation would occur where expenditure is larger than planned, or the planned expenditure would exceed the needed one, and it could have been possible, while planning, to channel these resources to those sectors that needed them more.

The aim of the State budget is to determine and to substantiate the resources that State institutions and local governments need to perform the State duties, defined by regulatory enactments, and, moreover, to ensure that within the period

for which these resources are envisaged appropriate revenue would cover the expenditure. In elaborating the budget, the need to ensure general economic balance should be taken into consideration (*see Section 1 (2) of “Law on Budget and Financial Management”*). If the minimum income threshold were reviewed on 1 July every year then the legislator would have to plan the State budget on the basis of assumptions. Thus, a budget deficit or surplus might occur, thus disrupting the balance of the budget, and this would require regular adjustments to it.

As the representative of the Ministry of Finance noted at the court hearing, in deciding on the State budget, it is essential to ensure balance between the economic, financial possibilities of the State and the welfare of society in general, taking into account the available resources and the need to balance the expenditure of all sectors. The Ministry’s representative pointed out that, in 2023, the State budget expenditure related to the minimum income threshold constituted EUR 104 million, i.e., less than one percent of the total budget expenditure. However, irrespective of the proportion of this expenditure in the total State budget, the difference between the planned and the actual expenditure, in absolute numbers, could be significant in order to cover other expenditure needed to satisfy other needs that are important for society.

At the court hearing, the representative of the *Saeima* and the representative of the Ministry of Welfare pointed out that, in the long-term, the average median income grew faster than consumer prices. Hence, the increase in the minimum income threshold not only compensated for the increase in the consumer price index but also facilitated the growth of the level of welfare of the recipients of the guaranteed minimum income benefit and of society in general.

The Constitutional Court concludes: although the minimum income threshold is being reviewed on the basis of data that have been acquired three years ago, the annual review of this threshold complies with the basic principles for elaborating the State budget and, in normal circumstances, promotes, in the long-term, the welfare of the most needy persons and decreases social inequality. This solution is directed at ensuring sustainable social assistance.

Thus, the legislator, in adopting Amendments of 2023, has fulfilled its obligation to review the minimum income threshold regularly.

**16.2.** The draft laws that were elaborated by the Ministry of Welfare before Amendments of 2020 were adopted envisaged legal regulation that was similar to the one that was adopted by Amendments of 2023 and is currently valid. However, the Cabinet instructed the Ministry to specify the draft law, envisaging that the minimum income threshold is reviewed at least once in three years (*see Para 7 of Minutes No. 57 of the Cabinet's extraordinary sitting on 30 September 2020. Available: tap.mk.gov.lv*).

When Amendments of 2020 entered into effect, as of 1 January 2021, the minimum income threshold was determined in compliance with the median income of 2018. Although the words “at least once in three years”, included in the law, provided for the possibility to review the minimum income threshold more often, until 1 July 2023, when the new contested provisions entered into effect, this threshold had not been reviewed. Hence, for the period of two and half years, the minimum income threshold had been determined and the guaranteed minimum income benefit had been disbursed on the basis of the data on median income of 2018. Thus, the *Saeima* had permitted a situation where the minimum income threshold had been based on data acquired even five years ago.

The *Saeima* has explained that, following Amendments of 2020, which were adopted in urgent procedure, adoption of new legal regulation had been envisaged with the aim of enforcing the Constitutional Court's judgement in full. Whereas the representative of the Ministry of Welfare explained at the court hearing that considerations regarding the State budget had been the reason why the draft projects, elaborated by this Ministry, had been specified, according to the objections made by the Ministry of Finance.

The plan to use the relative method for reviewing the minimum income threshold had been on the Cabinet's agenda already since 2014. Draft laws that envisaged application of the relative method, based on the median income, as well as reviewing the minimum income threshold every year had been elaborated. Moreover, following Amendments of 2020, the minimum income threshold, actually, already was determined on the basis of the relative method. At the court hearing, representatives of the *Saeima* or other institutions could not indicate any other objective grounds as to why annual review of the minimum income threshold was not envisaged immediately, except the State budget interests. In its written

reply, the *Saeima* noted that such circumstances that diminished the need to review the minimum income threshold once per year could be possible and mentioned economic recession as an example. However, it follows neither from the statements made by the participants in the case nor from materials in the case that the minimum income threshold was not reviewed because the median income or the economic situation had remained unchanged.

The outcomes of micro-simulation, conducted by the Bank of Latvia, revealed that, in the long-term, decrease of income inequality could be forecasted also if the minimum income threshold were reviewed every three years, however, such period of review in 2022-2023 might lead to increasing income inequality. It was concluded that annual review of the minimum income threshold would improve the situation of the most needy inhabitants every year, according to the trends in economic development, hence, the income of needy inhabitants would level out, compared to the income growth rates of the more prosperous inhabitants, and, thus, the risk of poverty and income inequality would also decrease (*see The Cabinet's Order of 17 September 2021 No. 657 "On the Plan for Improving the System of Minimum Income Support for 2022- 2024"*).

The Constitutional Court holds: the State budget interests *per se*, in the absence of any other objective considerations, cannot serve as the grounds for the State not fulfilling its obligation to ensure the minimum social assistance. It can be concluded that the legislator had permitted a situation where the minimum income levels were not reviewed in accordance with the most recent data on the median income and, thus, had not fulfilled the obligation, defined in the Constitutional Court's judgements, to review, as regularly as possible, compliance of the minimum social assistance with the socioeconomic situation.

**Thus, by the new contested provisions, the legislator has ensured regular review of the minimum income threshold. However, the legislator had not ensured regular review of the minimum income threshold by the initially contested provisions. Therefore, the initially contested provisions are incompatible with Article 1 and Article 109 of the Constitution.**

17. The Constitutional Court will verify now whether the procedure, established in the new contested provisions, in conjunction with other measures of

the social security system, creates for every needy person the possibility to create a life that is worthy of human dignity.

The Applicant points out that several support measures are accessible to needy persons, however, the minimum income threshold does not reach even the costs of food, therefore, it is irrelevant how large additional support can be received through other measures of social assistance.

The *Saeima*, in turn, underscores that the appropriateness of the minimum income threshold cannot be assessed in isolation but it should be assessed together with other forms of social assistance and benefits, ensured by the State. Allegedly, the guaranteed minimum income benefit and the housing allowance, as the totality of both these allowances is significantly higher than the minimum income threshold. Several of the persons summoned in the case also hold that the totality of all social support directly ensures a life that is worthy of human dignity.

The Constitutional Court has noted previously that food, clothing, housing, medical assistance and basic education, as well as possibilities for participating in social, political and cultural life should be considered as being a person's basic needs, the satisfaction of which at least on the minimum level should be guaranteed by the guaranteed minimum income benefit together with other measures of the social security system.

**17.1.** Several participants in the case and summoned persons noted that satisfying the basic needs of persons in need could be ensured by other measures of the social security system – State social benefits, crisis grants or benefits from voluntary initiatives by local authorities.

However, the Constitutional Court already has examined previously the support measures referred to and had concluded that these could not be considered as being such to be used for satisfying the basic needs of needy persons. I.e., State social benefits and other support measures, referred to in Section 36 (1) of Social Assistance Law, have a particular aim and they are disbursed to persons belonging to certain groups of inhabitants (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 22.2.*). The benefit in a crisis situation, envisaged in Para 2 of Section 35 (2) of Social Assistance Law, is not aimed at resolving issues that are linked to such conditions in the life of a needy person that subject them to the risk of poverty. This benefit is disbursed to particular persons

who are faced with a situation of crisis (*see Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03, Para 22.3.3.*). Whereas the existence and amount of different benefits that local governments may disburse in the framework of voluntary initiatives differ in each local government and depend on the possibilities of the particular local government to provide such support (*see Judgement by the Constitutional Court of 25 June 2020 in case No. 2019-24-03, Para 22.3.3.*).

At the court hearing, the representative of the *Saeima* noted that, in circumstances of economic upheavals and crisis, the legislator has envisaged targeted measures of support for overcoming financial difficulties. I.e., to diminish the consequences caused by Covid-19 pandemic, energy crisis caused by the war that Russia has launched in Ukraine, the legislator has introduced individual support measures with respect to payments for electricity and heating, has increased the coefficient of the housing allowance, granted additional food parcels, has introduced a benefit for seniors and increased the State family allowance.

These support measures were time-limited and provided to persons belonging to specific groups and, like the benefit in crisis situation, were aimed at overcoming specific crises. Therefore, these support measures cannot be considered as ensuring the long-term fulfilment of the basic needs of the needy persons.

Thus, the support measures referred to above cannot be considered as being aimed at satisfying the basic needs of every needy person.

**17.2.** In elaborating the draft Amendments of 2020, the Ministry of Welfare noted in the annotation to them that the guaranteed minimum income benefit allowed covering the most necessary daily costs, i.e., expenses for food, clothing, personal hygiene items, as well as other minor daily household expenditure. Allegedly, other parts of the social security system are aimed at ensuring other basic needs. I.e., the costs of food are ensured by the State guaranteed minimum income benefit, support from the Fund for Aid, free school lunches financed by the State and local governments, as well as soup kitchens. Costs of clothing are covered by the guaranteed minimum income benefit and support provided by non-governmental organizations. Housing costs are covered by the housing allowance and other support, provided by the local government, for dealing with housing

issues. Health services are ensured by benefits, paid for by the State, and benefits for covering certain expenses. The right to education is exercised through free education within the framework of general education, support from the Fund for Aid, as well as allowances for covering certain expenses. Participation in social and cultural life is said to be ensured by the events, organised by local governments and non-governmental organizations, as well as out-of-school interest-related education. Participation in political processes, in turn, is ensured by measures that are taken to ensure to persons access to elections, initiatives of the Fund of Non-governmental organizations aimed at reinforcing civil society and initiatives implemented by political parties to insure accessibility of information.

**17.2.1.** The minimum income threshold and, accordingly, from 1 July 2023, the guaranteed minimum income benefit is EUR 125 for the first and only person in the household and EUR 87.50 for other persons in the household, *inter alia*, children. From 1 January 2024, it will be EUR 137 and EUR 95.90, respectively (see *Data of the Central Statistical Bureau on the Median Minimum Income. Available: data.stat.gov.lv*).

The monthly cost of the food basket in the relative household expenditure budget per adult in 2020 was EUR 151.80 and EUR 154.46 for 15–18 years old child (see *Study of the Ministry of Welfare "Development of a New Methodology for Determining the Basket of Minimum Subsistence Consumption Goods and Services and its Approbation (pilot projects)"*. Available: *lm.gov.lv*). Changes in commodity costs in August of 2023, compared to August of 2020, in the consumption group “01.1 Food” is 39 percent (see *Inflation Calculator of the Central Statistical Bureau. Available: tools.csb.gov.lv/cpi\_calculator/lv*). This means that, after re-calculating the costs of the food basket, these costs in 2023 were approximately EUR 211 for one adult per month and EUR 215 for a 15–18 years old child.

Representatives of the *Saeima* and the Ministry of Welfare noted at the court hearing that, in addition to the guaranteed minimum income benefit, costs of food were covered also by the food parcels handed out in the framework of the Fund for Aid (hereafter – a food parcels), the value of which, obtained through public procurement, was EUR 17.65 per month. Thus, the guaranteed minimum income benefit, together with the food parcel, ensures to the first and only person in a

household for covering food related costs at least EUR 142.65 in 2023 and EUR 154.65 in 2024, whereas to other persons in the household – EUR 105.65 in 2023 and EUR 113.65 in 2024.

Section 59 (3<sup>1</sup>) of Education Law provides that the catering at the institution of education for learners enrolled in the programmes of basic education in forms 1–4 is financed from the State or local government budget. However, neither the State nor a local government is obliged to finance free lunches also for learners of other ages. Therefore, this support cannot be considered as such that allows every needy household to reduce its expenses for food.

At the court hearing, representatives of the *Saeima* and the Ministry of Education pointed out that soup kitchens were accessible in 30 locations in Latvia. However, there are 43 local governments in Latvia, hence, soup kitchens are not available to every needy person throughout the entire state.

The Constitutional Court concludes that the guaranteed minimum income benefit together with food parcels does not reach the costs of one person's food basket, whereas soup kitchens and free lunches are not accessible to every needy person.

**17.2.2.** In elaborating Amendments of 2020, the Ministry of Welfare envisaged that the costs of clothing could be covered by the guaranteed minimum income benefit or that it would be possible to obtain clothing in local governments with the support of non-governmental organisations.

However, the Constitutional Court already concluded that the guaranteed minimum income benefit, primarily, did not cover even the costs of the food basket, therefore, in no way it could be considered as being sufficient for purchasing clothing. Moreover, neither the *Saeima* nor the Ministry of Welfare provided information about how and the amount in which every needy person could receive support from the local government to obtain clothing. Thus, it cannot be considered that all needy persons were provided support for obtaining clothes.

**17.2.3.** Simultaneously with Amendments of 2020 to the contested provisions, the legislator also introduced uniform legal regulation on ensuring housing allowance.

Para 2 of Section 35 (1) of Social Assistance Law envisages a housing allowance – material support for covering expenses related to the use of housing.

Pursuant to Section 35 (3) of Social Assistance Law, the amount of a housing allowance is calculated by taking account such expenses as, e.g., the use of residential premises (rental payment, expenses for the mandatory administration activities), services related to the use of residential premises (heating, water, electricity, sewerage, waste management) and telecommunication services.

Pursuant to Section 35 (4) of Social Assistance Law, the amount of a housing allowance is calculated as a difference between the sum of the guaranteed minimum income threshold for a household, multiplied by the respective coefficient, defined in the fifth part of this section, and expenses for housing laid down in laws and regulations and the total income of the household. By Amendments of 2023, coefficients from 1.5 to 2.5 for calculating the housing allowance for a household were defined in Section 35 (5) of Social Assistance Law, which are to be applied to the amount of minimum income threshold, depending on the type of household. Certain limitations to the expenses used for calculating the household allowance are defined in Annex 3 of the Cabinet Regulation of 17 December 2020 No. 809 “Regulations Regarding the Assessment of the Material Situation of Household and Receipt of Social Assistance”.

At the court hearing, the representative of the Ministry of Welfare stated that, in 2010, the average monthly housing allowance for a single-person household had been EUR 100, but, in 2022, for a multiple-person household it had been EUR 168.88.

Within the framework of the Fund for Aid , needy persons can receive also sets of hygiene and household goods, the approximate value of which is EUR 2 per month.

In addition to the above, Sub-para 31 of the Cabinet Regulation of 1 June 2021 No. 345 “Regulations Regarding the Trade Service of a Protected Customer” envisages reduction of the bill for electricity for a poor or low-income household in the amount of EUR 5. Pursuant to Sub-para 38.<sup>2</sup>1 of the said Regulation, reduction of the bill until 31 December 2023 is EUR 20.

The Constitutional Court concludes that the legislator has eliminated the situation identified previously the Constitutional Court that support measures in housing matters were provided to persons in need depending on the social policy and financial possibilities of local governments. Currently, every person who

receives the guaranteed minimum income benefit may receive the housing allowance in the entire state and on the basis of the same criteria. This allowance should be recognised as such that ensures to every needy person support in housing matters at least in minimum amount.

**17.2.4.** Pursuant to Para 17 of Section 6 (2) of Health Care Financing Law, needy persons are released from the patient co-payment for the State paid health services. Pursuant to Para 3<sup>1</sup> and Para 100 of the Cabinet Regulation of 31 October 2006 No. 899 “Procedures for the Reimbursement of Expenditures for the Acquisition of Medicinal Products and Medical Devices Intended for the Outpatient Medical Treatment”, expenditures for the acquisition of medicinal products and medical devices are covered in full amount from the funds granted for reimbursement for a patient who has been recognised as a needy person, but not more than EUR 14 228.72 per one patient within the period of 12 months.

Para 1 of Section 35 (2) of Social Assistance Law provides for an additional social assistance benefit for covering certain expenses, and it is a material support to persons for ensuring social functioning and independent life. The said benefit may be used also for covering expenditure related to health care.

Hence, the support measures envisaged by the legislator ensure to every needy person at least the minimum amount of health care.

**17.2.5.** Article 112 of the Constitution guarantees to everyone the right to education and the possibility, ensured by the State, to acquire basic education without charge. Study aids are financed from the resources of the State and local governments. However, pursuant to Section 58 (3) of Education Law, parents or persons who exercise custody have the obligation to ensure, within the limits of their financial possibilities, the individual study accessories needed for education of the child. These are, e.g. stationery, clothing and footwear, items of hygiene, materials for creating objects or products in the learning process.

Children from needy households who have started attending school have the possibility receive a free package of school supplies from the Fund for Aid. Two types of packages of school supplies are available – intended for elementary school pupils, 5 to 10 years old, and for primary school pupils, 11 to 16 years old. The packages of school supplies include such objects as, e.g., backpacks, notebooks, materials, writing-materials and other stationery items (*see: Children*

*from Underprivileged Families can Receive Sets of Free School Supplies. Available: atbalstapakas.lv*). At the court hearing, the representative of the Ministry of Welfare noted that, depending on the pupil's age, the value of the package of school supplies was either EUR 19 or EUR 30.

The Constitutional Court concludes that everyone has been ensured the possibility to obtain education free of charge and that support has been ensured to needy households with children for the acquisition of study aids at least in the minimum amount.

**17.2.6.** In difference to other general basic needs of person examined above, the need to participate in social and cultural life, as well as in political processes is much more individual and, to a large extent, depends on the interests that the particular person has. Inhabitants have access to various free cultural events, organised by the State or local governments, also library services can be used free of charge. Hence, it cannot be recognised that support is not provided to needy persons for participation in social and cultural life, as well as in political process.

In view of all the above, the Constitutional Court concludes: although the legislator has introduced support measures for satisfying the basic needs in at least the minimum amount, it cannot be recognised that, in general, every needy person has sufficient support for satisfying all their necessary basic needs.

**Hence, the procedure for determining the minimum income threshold, set out in the new contested provisions, in conjunction with other measures of the social security system, does not create for every needy person the possibility to create a life that is worthy of human dignity. Therefore, they are incompatible with Article 1 and Article 109 of the Constitution.**

**18.** The Constitutional Court draws attention to the fact that the State Audit Office has concluded, already in 2014, that local governments have not conducted targeted assessment of the social situation of inhabitants and their basic needs in order to create an effective system of social assistance (*see: Audit Report of the State Audit Office. Legality and Effectiveness of Social Assistance Provided by Local Governments. Riga, 2014, pp. 5 and 6.*). It is concluded also in the State Audit Office's audit report of 2020 that different approach to determining the types of social allowances, their number and the circle of recipients continued in local

governments. The resources, used by local governments, envisaged for social assistance, not always were targeting the groups of inhabitants subject to the risk of poverty. Moreover, the local government social services most often even do not have at their disposal updated information on the structure of inhabitants residing in the local government, also on such groups of inhabitants who are subject the most to the risk of poverty and social exclusion (*see: Audit Report of the State Audit Office. Does the social inclusion policy implemented in the country achieve the goals set for it in the field of poverty alleviation? Riga, 2020, pp. 8, 104 and 112*).

At the court hearing, the representative of the State Audit Office underscored that it was still impossible to assess how many of all instruments of the social assistance system were available to the most needy inhabitants. No data on this are available because local governments do not record the support measures that have been provided. At the time when the State Audit Office conducted the audit, local governments were spending 41 percent of all financial resources that they spend for social assistance on the forms of primary support – the guaranteed minimum income benefit, the housing allowance and benefit in a situation of crisis. Part of the remaining 59 percent have been used, for example, for allowances on festive occasions and gifts, not for providing for the basic needs. Since data are lacking, it is impossible to verify whether the minimum income threshold and the support measures of the social security system are sufficient.

In view of the information obtained in the present case, opinions of the participants in the case and the summoned persons, it can be concluded that such a system of social assistance that would ensure transparent provision of support still has not been established, although local governments and policy makers, as well as the legislator itself had access to information about the amount and effectiveness of the support provided to needy persons. Although the legislator has introduced into the social assistance system certain changes aimed at ensuring a life that is worthy of human dignity and has determined support measures that ensure satisfaction, at least in the minimum amount, of certain basic needs, in general, these measures still cannot be recognised as being sufficient and effective. At the same time, the system of social assistance should be such as to ensure that the guaranteed minimum income benefit, together with other measures of the

social security system, would be able to satisfy, at least in the minimum amount, the basic needs of needy person to help these persons escape the poverty trap on their own. However, this system may not create such circumstances that would diminish the wish of needy persons to co-participate in providing for their basic needs and to improve their living conditions.

**19.** Since the Constitutional Court has recognised both the initially contested provisions and the new contested provisions as being incompatible with Article 1 and Article 109 of the Constitution, the moment as of which these provisions become void needs to be decided on.

Pursuant to Section 32 (3) of Constitutional Court Law, a legal provision that has been recognised by the Constitutional Court as being incompatible with a superior legal provision is deemed to be void as of the date when the Constitutional Court's judgement is published, unless the Court has provided otherwise. The said legal provision grants to the Constitutional Court the right to decide on the moment as of which a legal provision that has been recognised as being incompatible with a superior legal provision becomes void.

The Applicant request recognising all contested provisions as void since the moment of adoption thereof. Constitutional Court Law does not prohibit from recognising contested provisions as void from the moment of their adoption. However, in exercising the rights granted to it in Section 32 (3) of Constitutional Court Law, the Constitutional Court must ensure, to the extent possible, that the situation that may arise from the moment when the contested norm becomes invalid does not lead to an infringement of the fundamental rights guaranteed to persons in the Constitution, as well as does not inflict substantial harm upon the interests of the State or society (*see Judgement by the Constitutional Court of 16 December 2005 in Case No. 2005-12-0103, Para 25, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22*). The law not only authorises the Court but also imposes responsibility to ensure that its judgements would bring legal certainty, clarity and peace in the social reality (*see Judgement by the Constitutional Court of 21 December 2009 in Case No. 2009-43-01, Para 35.1.*).

In the present case, it should be taken into consideration that the contested provisions affect a socially significant area – the minimum social assistance that is

required to ensure that every needy person can lead a life that is worthy of human dignity. If the Constitutional Court were to rule that the contested provisions should be recognised as void as of the moment of their adoption that, starting already with 1 January 2021, there would no longer be legal grounds for determining the minimum income threshold and disburse to needy persons suitable benefits.

**19.1.** The initially contested provisions have become void already. It must be underscored once again that, pursuant to Section 32 of Social Assistance Law, the purpose of social assistance is to provide material support to low-income households in order to ensure income at the level of the guaranteed minimum income threshold and cover expenses related to the use of the housing, and also provide support for covering certain expenses in crisis situations. This means that social assistance is aimed at satisfying immediately a person's basic needs. Whereas pursuant to Section 5 (1) of the Social Assistance Law, social assistance is provided to a person on the basis of an evaluation of their material resources – income and property – individually providing for the participation of each person. If the initially contested provisions were recognised as valid as of the moment of their adoption then the re-calculation of the respective benefits in accordance with the current socioeconomic situation of every needy person would be impossible and would be contrary to the purpose of social assistance.

The Constitutional Court holds that recognising the initially contested provisions as being void as of the moment of their adoption would also cause legal instability and would be contrary to the purpose of adopting the legal regulation on social assistance. Therefore, the Constitutional Court cannot recognise the initially contested provisions as being void from moment of their adoption.

**19.2.** As regards the new contested provisions, it should be taken into consideration that the *Saeima*, respecting the findings made in this judgement, has to adopt new legal regulation, i.e., such legal regulation that would ensure that the minimum income threshold, together with other measures of the social security system, would ensure to needy persons a life that would be worthy of human dignity.

Deciding on the temporal effect of the judgement, it should be taken into account that adoption of the State budget is a function that is important for the

operation of the State. Determination of the minimum income threshold is closely linked to the expenditure envisaged in the State budget and the planning thereof, and this threshold affects economy in general (*compare: Judgement by the Constitutional Court of 25 June 2020 in Case No 2019-24-03, Para 25*).

In view of the previous findings made in this judgement, the legislator must implement such system of social assistance that would ensure transparent, effective and targeted provision of support. Moreover, the changes must be aligned with the State budget for the next fiscal year. Hence, in the present case, it is necessary and admissible that the provisions that are incompatible with the Constitution remain in effect for a certain period of time.

Hence, the new contested provisions shall be recognised as void as of 1 January 2025.

### **The Substantive Part**

On the basis of Sections 30-32 of Constitutional Court Law, the Constitutional Court

**held :**

**1. To recognise Section 33 (1) of Law on Social Services and Social Assistance (in the wording that was in effect from 1 January 2021 until 30 June 2023) and the second and the third part of Section 2<sup>2</sup> of the Law “On Social Security” (in the wording that was in effect from 1 January 2021 until 30 June 2023) as being incompatible with Article 1 and Article 109 of the Constitution of the Republic of Latvia”.**

**2. To recognise the first and the second part of Section 33 (1) of Law on Social Services and Social Assistance (in the wording that is effect since 1 July 2023) and the second and the third part of Section 2<sup>2</sup> of the Law “On Social Security” (in the wording that is effect since 1 July 2023) as being incompatible with Article 1 and Article 109 of the Constitution of the Republic of Latvia and void as of 1 January 2025”.**

The judgement is final and not subject to appeal.

The judgement was delivered in Riga on 5 October 2023.

The judgement enters into effect on the date it is pronounced.

Chairperson of the court hearing

Aldis Laviņš