THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGMENT

On behalf of the Republic of Latvia

in Riga, on 3 December 2020

in the Case No. 2020-16-01

The Constitutional Court of Latvia, comprised of the Chairperson of the Court hearing Sanita Osipova, Justices Aldis Laviņš, Gunārs Kusiņš, Daiga Rezevska, Jānis Neimanis, and Artūrs Kučs,

with regard to the constitutional complaints lodged by 20 members of the 13th *Saeima*: Valērijs Agešins, Jānis Urbanovičs, Andrejs Klementjevs, Artūrs Rubiks, Nikolajs Kabanovs, Boriss Cilevičs, Regīna Ločmele, Edgars Kucins, Jānis Tutins, Vjačeslas Dombrovskis, Sergejs Dogopolovs, Jānis Krišāns, Inga Goldberga, Ivans Ribakovs, Ivans Klementjevs, Igors Piemovs, Evija Papule, Ļubova Švecova, Vladmirs Nikonovs, and Vitālijs Orlovs,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Section 16, clause 1, Section 17, paragraph 1, clause 3, and Section 28[1] of the Constitutional Court Law,

on 3 November 2020, heard by way of written proceedings the case

"On the compliance of Section 1, paragraph 2 of the Riga City Council Dismissal Law with Articles 1 and 101 of the *Satversme* of the Republic of Latvia".

Facts

1. On 13 February 2020, the *Saeima* passed the Riga City Council Dismissal Law. Its Article 1 provides:

"With this law, the *Saeima* dismisses the Riga City Council, taking into account that the Riga City Council:

(1) is unable to take decisions due to the fact that more than half of the total number of deputies of the relevant council has not participated in in three consecutive sessions (Section 91, paragraph 1, clause 4 of the Law on Local Governments);

(2) allows illegal actions and fails to perform the autonomous function of the local government to organise municipal waste management, specified in the Law on Waste Management, the Law on Local Governments, and other regulatory enactments (Section 91, paragraph 1, clause 1 of the Law on Local Governments)."

2. **The Applicant—20 deputies of the 13th *Saeima*** (hereinafter: "the Applicant")—holds that paragraph 1 of Article 1 of the Riga City Council Dismissal Law (hereinafter "the contested norm") does not comply with Articles 1 and 101 of the *Satversme* of the Republic of Latvia (hereinafter: "*Satversme*").

Although the local government is a derived public person, in the performance of its functions it is not subordinated to the state and enjoys discretion. The state only supervises the legality of the actions of the government but may not question or restrict the autonomous functions of the local government. The greater the autonomy of the local government as determined by law, the more democratic the state is.

In order to have grounds to dismiss the local government council, it is necessary to establish the illegal action, i.e., non-compliance with the requirements of a specific regulatory enactment, taken by it. Moreover, the taking of such an action must be established repeatedly. The convocation of the Riga City Council subject to the Riga City Council Dismissal Law begun its work on 22 June 2017, and the actions of the previous convocation of the Riga City Council cannot be attributed to this convocation. It is the dismissed convocation of the Riga City Council that has ensured that the judgment of the Constitutional Court of 6 December 2012 in the case No. 2012-01-01 "On compliance of paragraph 12 of the Transitional Provisions of the Waste

Management Law, insofar as it applies to contracts concluded without applying regulatory enactments on public procurement or inconsistent with regulatory enactments on public procurement, with Article 1 of the *Satversme*" (hereinafter: "judgment in the case No. 2012-01-01") is executed. Namely, on 14 June 2019, the Riga City Council signed a concession agreement "On the implementation of the Riga City municipal waste management system" (hereinafter: "concession agreement") with a limited liability stock company (SIA) "Getliņi Eko" and the joint stock company "Tīrīga". In addition, from 2013 to 2019, the Ministry of Environmental Protection and Regional Development (hereinafter also "the Ministry") did not observe any violations of the law by the Riga City Council in connection with the judgment in the case No. 2012-01-01.

In implementing its autonomous function, the local government has the right to use the options granted to it by the law, including the organisation of the management of municipal waste within the framework of a public–private partnership. The concession agreement has been concluded in accordance with the procedure laid down in the regulatory enactments, and its conclusion has been co-ordinated with the Ministry of Environmental Protection and Regional Development, the Ministry of Finance, and the Central Finance and Contracting Agency. Decision No. 19 "On interim resolution" (hereinafter: "the decision on interim resolution") cannot be considered as one wherein violations in the actions of the Riga City Council have been established. Conclusions about the legality of the actions of the Riga City Council in connection with the concession agreement could be made only after the adoption of the administrative act—the decision of the Competition Council—when it would enter into force.

The Applicant admits that after the decision on interim resolution was made, the Riga City Council has asked the Cabinet of Ministers to declare a state of emergency. However, the extension of the state of emergency was not necessary, because the Riga City Council has ensured that municipal waste was collected and removed in the city. A solution for both interim and long-waste management has been found, which has complied with the requirements of regulatory enactments.

In addition, the accusations levelled against the Riga City Council in the initial impact assessment report (hereinafter: "the annotation") of the draft law "Riga City Council Dismissal Law" (hereinafter: "the Draft Law") on the non-development and adoption of binding resolutions in the field of municipal waste management are not substantiated. As such, it cannot be established that the Riga City Council has repeatedly violated the requirements of the *Satversme* or other regulatory enactments or has not complied with the court judgment.

In the opinion of the Applicant, the right of the state to dismiss a particular local government must be assessed, such a decision being based on disputable facts in connection with the implementation of an autonomous function. The dismissal of a local government means not the state's intervention in the autonomous function implemented by the local government, but the deprivation of essentially all local government functions and the violation of the rights of the local government. Only in a few European countries is it possible to dismiss the entire elected municipal representative body (decision-making body), in which case the possibility of political discrimination must likewise be taken into account.

The Applicant considers that in the process of development and adoption of the Draft Law substantial violations of the principle of good legislation have been committed. *Inter alia*, the Draft Law was not co-ordinated with the association "Latvian Association of Local and Regional Governments" (hereinafter: "the Latvian Association of Local and Regional Governments") and was not sent to the Riga City Council prior to the Draft Law being supported at the sitting of the Cabinet of Ministers. The opinion of the Riga City Council has not been heard at the sitting of the Cabinet of Ministers. In addition, the *Saeima* has appointed the Budget and Finance (Tax) Committee (hereinafter: "the Budget and Finance Committee") as the responsible committee at the last minute without reasoning, and the Draft Law has been recognised as urgent. The legitimate aim of the restriction of local government rights is also not apparent.

The criterion of proportionality precludes any violation from being considered as a ground for dismissal of the local government council, because

only a substantial and, moreover, a recurrent violation can be considered as a ground for dismissal. Even a court decision on the validity of one party's actions does not always mean that the other party has broken the law. However, the violation indicated as the ground for dismissal of the local government council must be recognised as such at least once by a court judgment.

The dismissal of the local government council is the last and most severe repressive means of *ex-post* control of the local government, which can be used only if all other means have not ensured a legal and effective operation of the local government. The legislature should have considered the proportionality of the selected measure in the particular situation. Neither in the annotation of the Draft Law nor in the legislative process has it been analysed why, in a situation when no substantial violations in the implementation of the municipal waste function can be established, there would be grounds to decide on dismissal of the Riga City Council. Thus, the contested norm violates the principle of democracy and the principle of local government.

3. **The institution that has issued the contested act—the *Saeima*—**holds that he contested norm complies with Articles 1 and 101 of the *Satversme*.

The *Saeima* does not agree with the view of the Applicant that the dismissal of the Riga City Council was politically motivated. The basis for initiation of the Draft Law and the adoption of the law was the action of the Riga City Council in implementing a specific autonomous function of the local government: organisation of the management of public services. Municipal waste management is strictly regulated by the regulatory enactments, and the Riga City Council has not performed this function in accordance with the regulatory framework in force, thus causing the need to declare a state of emergency. Riga City Council has systematically and repeatedly violated regulatory enactments, therefore the application of such a means as *ex-post* control of the actions of the local government as dismissal of the council has been justified.

The Riga City Council, *inter alia* in the convocation to which the law on dismissal of the Riga City Council applied, has not ensured the execution of the

judgment in the case No. 2012-01-01. The Ministry has repeatedly pointed this out to the Riga City Council, amongst other violations in the field of municipal waste management. The actions of the Riga City Council have resulted not in the organisation of municipal waste management in accordance with the regulatory enactments, but in the initiation of a case in the Competition Council and the decision on interim resolution, which was also upheld by the decision of the Regional Administrative Court. Although the case has not been examined on the merits yet, in deciding the issues on the validity of the application of the decision on interim resolution, the court has assessed the *prima facie* legality or illegality of the contested administrative act.

After 15 September 2019, the Riga City Council has not been able to ensure the continuity of municipal waste management services in accordance with the requirements of the regulatory enactments. Therefore, the Cabinet of Ministers had to get involved by issuing Order No. 432 "On the declaration of a state of emergency in the administrative territory of the city of Riga" (hereinafter: "Order No. 432" on 12 September 2019 and declaring a state of emergency in the administrative territory of the city of Riga from 12 September 2019 until the date of expiration of the decision on interim measures, but no later than 11 December 2019. The resolution of questions on municipal waste management would not have been possible without the extension of the state of emergency. In addition, it is the problems with the organisation of municipal waste management in Riga that have led to the need to supplement the Waste Management Law, *inter alia* by granting the municipality the right to continue co-operation with the current waste manager if the municipality has not concluded an agreement with the new waste manager.

The dismissal of the local government council is, in essence, extraordinary means of *ex-post* control of the actions of the local government, the use of which is permitted only in the cases and in accordance with the procedure specified by law. The Draft Law on dismissal of the local government council does not necessarily have to be co-ordinated with the Latvian Association of Local and Regional Governments. In addition, its representatives

have participated both in the sitting of the Cabinet of Ministers and in the sitting of the *Saeima* committee when the Draft Law was being discussed. The hearing of the Chairman of the City Council at the sitting of the Cabinet of Ministers complies with the principle of good governance, but a mandatory obligation to do so does not follow from the law. Riga City Council has submitted a written opinion on the Draft Law, and its representatives have been given an opportunity to express their objections and arguments at the meetings of the Budget and Finance Committee. As such, by adopting the contested norm, the principle of good legislation has not been violated. The selected means of *ex-post* control of the activities of the City Council was proportionate in the particular situation, and it was not possible to prevent the violations of regulatory enactments committed by the Riga City Council with less restrictive means. In addition, the right of citizens to elect a new council has not been restricted.

It should also be taken into account that in the particular situation the realisation of the autonomous function of the respective local government has affected not only the rights and interests of the residents, but also made it more difficult to achieve the national and European Union waste management and protection goals. Waste management has historically been an important part of environmental law; moreover, it is also regulated by the regulatory enactments of the European Union. Achieving the goals of an effective environmental protection system is hindered and significantly jeopardised if proper participation in the implementation of regulatory enactment requirements of local governments as significant in terms of territory and size of population as the city of Riga is not achieved for a prolonged period of time.

The right to participate in the work of the state and local governments contained in Article 101 is not absolute, namely, it may be exercised in the manner prescribed by law. This applies not only to the right of persons to participate in the local government elections and be elected to the local government council in accordance with the procedure prescribed by law, but also to the organisation of the work of the local government in a way that complies with the requirements of the regulatory enactments. The local government enjoys

wide discretion in its operation, but it is not absolute, as the local government is obliged to operate within the framework of the law. If the framework specified in the regulatory enactments in an area as strictly regulated as municipal waste management is not observed systematically and for a prolonged period of time, the responsibility for it is borne by the local government council, which is unable to ensure and manage the work of the local government within the boundaries of the law and in the interests of the citizens of the municipality.

4. The invited person—the Cabinet of Ministers—holds that the contested norm complies with Articles 1 and 101 of the *Satversme*.

In preparing the Draft Law, the actions of the Riga City Council in performing one of the autonomous functions of a local government—the organisation of management of municipal waste—have been evaluated. The assessment of the actions of the respective convocation of the Riga City Council also covered the actions of the deputies of the previous convocation, because the Riga City Council had not ensured the execution of the judgment in the case No. 2012-01-01. In addition, in the field of municipal waste management other violations have been committed, about which the responsible institutions informed the Riga City Council and which had not been averted by the convocation of the Riga City Council to which the Riga City Council Dismissal Law applied.

The local government council may be dismissed if it violates regulatory enactments or is incapable of action. In order to establish the recurrence of violations, they do not need to be recognised by a court judgment that has entered into force. The violations committed by the Riga City Council have been substantial and recurrent, committed throughout the entire term of the respective convocation of the Riga City Council, *inter alia* by ignoring the instructions of the responsible institutions. The actions of the Riga City Council have led to the need to declare a state of emergency in order to prevent the threat of an anthropogenic catastrophe that would be associated with the potential damage to the environment and public health. The City Council has also not taken any action to ensure the continuity of municipal waste management services after 11

December 2019. Therefore, the state of emergency had to be extended until 12 March 2020. The systematic violations committed by the Riga City Council have endangered the implementation of the principles of public administration in the work of the local government, and thus the proper execution of the local government function—to organise the management of municipal waste—has been endangered.

The adoption of the Riga City Council Dismissal Law has not violated the rights of the Riga City Council as an elected self-government institution and there has been no unlawful state interference in the activities of the local government and "deprivation of all functions", as indicated in the application. The right of citizens to participate in the elections of the Riga City Council and to elect a new city council has also not been restricted. The fact that the Draft Law was not sent to the Latvian Association of Local and Regional Governments for approval and the Riga City Council was not informed about it does not point to a violation of the principle of good legislation. The regulatory enactments do not stipulate the obligation to co-ordinate the issue of dismissal of the local government council with the Latvian Association of Local and Regional Governments, taking into account the nature of the issue, i.e., the violations committed by a particular local government council, which serve as grounds for its dismissal. In addition, a representative of the Latvian Association of Local and Regional Governments has participated in the sitting of the Cabinet of Ministers on 17 December 2019, at which the Draft Law was considered. The view of the Riga City Council has been clarified in the Ministry's correspondence with the local government. In the opinion of the Cabinet of Ministers, the violations committed by the Riga City Council were sufficiently substantial for the Draft Law to be immediately forwarded to the *Saeima*.

5. **The invited person—the Ministry of Finance**—points out that the Riga City Council was obliged to ensure that the waste manager is selected in accordance with the procedure specified in the regulatory enactments regulating public

procurement or public–private partnerships and that waste management services are provided to the residents.

Riga City Council has chosen to select a municipal waste manager within the framework of a public–private partnership by concluding a concession agreement. On 9 January 2017 and 19 December 2018, the Central Finance and Contracting Agency, in accordance with the requirements of the regulatory enactments, provided a positive opinion on the assumptions contained in the financial and economic calculations and risk sharing in the agreement between the public party and the private party. The Ministry of Finance also issued a positive opinion on the expected impact of the conditions mentioned in the calculations on the extent of long-term state budget liabilities and the general government sector budget balance and debt on 25 January 2017 and 20 December 2018.

6. **The invited person—the Ministry of Justice**—hold that the contested norm complies with Articles 1 and 101 of the *Satversme*.

The Waste Management Law is part of the environmental protection system, and in accordance with Article 115 of the *Satversme* the state has an obligation to ensure the compliance with the legal acts in this field. Inadequate organisation of municipal waste management in the city of Riga has significantly violated the constitutionally established interests of the society in the field of environmental protection. Such action has created doubts about the ability of the local government council to comply with regulatory enactments in its further activities, therefore the Cabinet of Ministers has had a legal basis to decide on the most severe means of controlling the activities of the local government council and decide in favour of preparation of the Draft Law and its submission to the *Saeima*.

The Riga City Council has committed recurrent, systematic violations of regulatory enactments and ignored the opinion of the responsible institutions. Amongst other things, the dismissed convocation of the Riga City Council has not ensured the execution of the judgment in the case No. 2012-01-01 within two

years after the commencement of its term. In addition, by concluding the concession agreement, the entire territory of the municipality has been determined to be one waste management zone, although with the then binding Riga City Council Regulation No. 90 “Binding regulation for municipal waste management” of 17 December 2013 (hereinafter: “Binding Regulation No. 90”) Riga was divided in three waste management zones. As such, the Riga City Council has not been able to ensure the provision of municipal waste management services and for the purposes of environmental protection the Cabinet of Ministers has had to declare a state of emergency.

7. **The invited person—the Ministry of Environmental Protection and Regional Development**—holds that the contested norm complies with Articles 1 and 101 of the *Satversme*. The dismissal of the Riga City Council was related not only to the long-term efforts of the Ministry to draw the attention of the Riga City Council to the need to comply with the judgment in the case no. 2012-01-01, but also with the need to declare a state of emergency in order to prevent the risk that the autonomous function of the municipality—the organisation of the municipal waste management—is not performed in the city of Riga. It is the actions of the local government on which the effectiveness of the implementation of the local government functions and the protection of the residents’ interests depends. In developing the Draft Law, the actions of the Riga City Council in organising municipal waste management have been evaluated, and the assessment performed by the Ministry has been reflected in the Draft Law.

   Since 2013, the Ministry has repeatedly pointed out violations to the Riga City Council, but the Riga City Council has long hesitated to eliminate them. The Ministry has also received submissions from private persons, the Ombudsman, and deputies of the Riga City Council requesting the elimination of the violations. Since 2017, the Competition Council has also drawn the attention of the Riga City Council to possible violations in the selection of municipal waste managers. On 18 July 2019, the Competition Council initiated case No. KL/2.2-5/19/14 “On violation of the prohibition specified in Article

102 of the Treaty on the Functioning of the European Union in the activities of the limited liability company 'Getliņi EKO' and Riga City Council".

Until 15 September 2019, in the city of Riga in force were such waste management agreements that did not comply with the regulatory enactments regarding public procurement and the judgment in the case No. 2012-01-01. In addition, the Riga City Council did not solve the issue of provision of separate waste management services in accordance with the requirements of regulatory enactments and appropriate availability in the entire territory of the city for all residents. Neither did the Binding Regulation No. 90 include all the requirements specified in the regulatory enactments regarding the management of municipal waste in the local government in force, including conditions and requirements regarding the organisation of separate waste collection, obligations of merchants, and participation of residents in waste sorting.

The Riga City Council's act of choosing the new municipal waste manager was, *inter alia*, also not in compliance with the Binding Regulation No. 90. After the decision on interim resolution was made, the Riga City Council itself acknowledged that it was unable to ensure the continuity of the provision of municipal waste management services and invited the Ministry to involve itself in resolving the situation. As such, in accordance with regulatory enactments, the Riga City Council has not been able to ensure the attainment of its autonomous function by resolving the issue of waste management agreements between waste generators or holders and waste managers.

After the declaration of the state of emergency, the Riga City Council did not take appropriate action to find a long-term, rather than temporary, solution in the field of municipal waste management. Namely, the Riga City Council has not taken action necessary to initiate the selection of waste managers in accordance with the requirements of the regulatory enactments. It was unclear how the issue of conclusion of contracts between waste managers and producers would be resolved after 11 December 2019, therefore the state of emergency had to be prolonged.

The Ministry has also issued a negative opinion on the binding Riga City Council Regulation No. 84 "On the management of municipal waste in the city of Riga" of 30 October 2019. In addition, the operation of select clauses of the binding regulation No. 87 "On the management of municipal waste in the city of Riga" adopted on 29 November 2019 were suspended by an order of the Minister of Environmental Protection and Regional Development.

The contested norm, as well as the entire Riga City Council Dismissal Law, has been adopted in compliance with the principle of good legislation. The obligation to hear out the local government before restricting its rights arising out of the principle of local government has also been observed. The application does not indicate specific circumstances that would indicate non-compliance with the requirements of regulatory enactments in the process of adoption of the Draft Law and that as a result of this process the public trust in the state and the law would be endangered.

8. **The invited person—the State Audit Office**—indicates that in accordance with its competence it inspects the usage of financial resources and property of the state, local governments, and other entities referred to in law, and conducts assessment of legality and regulatory framework of specific actions only within audits.

   Riga City Council and its capital companies have on many occasions been the entities audited in the audits performed by the State Audit Office, which have covered a wide range of municipal functions. However, issues related to the organisation of municipal waste management in the city of Riga have not fallen within the scope of the audits performed by the State Audit Office.

9. **The invited person—the Competition Council**— points out that free competition is the basis for the development and efficient functioning of markets for goods and services and that the protection of free competition is an important public interest. Abuse of its market power is one of the ways in which free competition can be impeded.

The case initiated by the Competition Council on 18 July 2019 examines a possible violation of the Treaty on the Functioning of the European Union by the Riga City Council, which may affect trade not only at Riga, regional, or national level, but also trade between Member States. On 9 September 2019, within the framework of this case, the Competition Council adopted a decision on interim measures in order to protect the public interest in competition and prevent significant and irreversible changes in the market for unsorted and separate municipal waste collection and transportation services in the Riga city administrative territory.

The decision to provide waste management services in the form of a public–private partnership may be taken by the local government in the exercise of its autonomous function and is not subject to independent control. However, the selected provision of waste management services is subject to the Competition Law and the competition law of the European Union, insofar as economic activity is performed or planned. In the case initiated by the Competition Council, the realisation of the autonomous function of the local government is affected only insofar as the action of the Riga City Council as a market participant in economic activity and its compliance with the prohibition of abuse of a dominant position defined in Article 102 of the Treaty on the Functioning of the European Union is assessed. The investigation into the case has not yet been completed.

10. **The invited person—the Procuring Monitoring Bureau**— indicates that it has not received any submissions in connection with the concession agreement concluded between the Riga City Council and the entrepreneur.

In order to determine which regulatory enactment is applicable and appropriate for the specific procurement, the subject of the procurement, i.e., what is it that the customer purchases and what are the aspects of the transaction, as well as the conditions under which the supplier and other parties are involved in the transaction, must be assessed primarily. If the requirements of regulatory

enactments are observed, then the concession procedure is, in essence, appropriate for ensuring the municipal waste management system.

Within the framework of public procurement, full and simultaneous implementation of all principles is not possible. Although the conclusion of several contracts for the works covered by the procurement may increase competition, the objectives of each specific procurement procedure, as well as the terms of the contract and the specific transaction must be assessed at the same time. In addition, the division of the procurement subject falls within the discretion of the contracting authority.

On 20 November 2019, the Procurement Monitoring Bureau informed the Riga City Council that it is entitled to organise a negotiation procedure in accordance with Section 8, paragraph 7, clause 3 of the Public Procurement Law to ensure the waste collection and removal until the binding regulations developed by the Riga City Council enter into force and as a result of the procurement procedure the Riga City Council concludes a relevant agreement. This follows from the circumstances which led to the declaration of the state of emergency, namely the need to prevent the threat of an anthropogenic catastrophe involving potential damage to the environment and public health.

On 1 and 8 March 2020, announcements regarding the result of the open tender "Provision of Municipal Waste Management Services in the Administrative Territory of the City of Riga" announced by the Riga City Council on 11 December 2019 were published. In this tender, the subject of the procurement was divided into four parts. The results of the competition were not contested.

11. **The invited person—the Latvian Association of Local and Regional Governments**—considers that in the *ex-post* control of the activities of the local government council, the methods used should be such as to have the least possible impact on the autonomy of the actions of the elected council.

The Riga City Council Dismissal Law provides for the dismissal of a democratically elected local government council. The grounds for dismissal of

each council are assessed individually, but the dismissal procedure must be the same in all cases. The Latvian Association of Local and Regional Governments has not been asked to provide an opinion prior to the consideration of the Draft Law in the Cabinet of Ministers. The opinion of the Riga City Council has not been heard either. During the meeting of the Budget and Finance Committee, the hearing of the representatives of the Riga City Council and the Latvian Association of Local and Regional Governments was formal.

Consequently, Articles 86 and 87 of the Law "On Local Governments" have been violated and the principle of good legislation has not been observed. In a democratic state governed by the rule of law, it is not permissible for a draft law to be forwarded without consultation with those subjects who are most directly affected by it.

In the case of dismissal of the Riga City Council, the work of the deputies of the previous terms of office has also been evaluated. In cases when the grounds for dismissal of the council may be interpreted differently, an assessment of the court or the prosecutor general is required, which would provide a legal basis for dismissal of the council.

12. **The invited person—the association "Latvian Association of Large Cities"**—considers that the contested norm does not comply with Articles 1 and 101 of the *Satversme*.

The interim administration of the Riga City Municipality appointed by the Riga City Council Dismissal Law has not taken any action after the entry into force of this law to eliminate the alleged inability of the Riga City Council to organise municipal waste management contained in the contested norm. On the contrary, the interim administration has in fact continued the work started by the Riga City Council in the field of municipal waste management, thereby essentially confirming the correctness and justifiability of this work, as well as the ability of the Riga City Council to perform the respective autonomous function.

It is the dismissed Riga City Council that has concluded a concession agreement, thus terminating the operation of the previously valid municipal waste management agreements which did not comply with the requirements of regulatory enactments and the judgment in the case No. 2012-01-01. Even after the declaration of the state of emergency, the Riga City Council had acted in accordance with the law and the specific factual situation in order to ensure the continuity of the provision of municipal waste management services. The extension of the state of emergency in itself did not ensure the collection and removal of waste in the city of Riga—that required assertive and prompt action on the part of the Riga City Council. In addition, even before the adoption of the Riga City Council Dismissal Law, an open tender had been announced in order to select waste managers in accordance with the procedure specified in regulatory enactments.

As to the allegations of non-compliance of the binding regulations of the Riga City Council with the laws and regulations of the Cabinet of Ministers, it should be taken into account that the interim administration of the Riga City Council has made only grammatical and clarifying amendments to these regulations. As such, in the view of the invited person, during the adoption and entry into force of the Riga City Council Dismissal Law, no such violation of regulatory enactments has been established that could be recognised as a precondition for dismissal of the local government council.

13. **The invited person—Professor of the Faculty of Social Sciences of the University of Latvia *Dr. sc. pol.* Iveta Reinholde**—points out that according to the European Charter of Local Self-Government (hereinafter "the Charter") and the recommendations of the Council of Europe, dismissal of a local government council as a means of control of local government activity can be employed only when all other administrative, financial, and democratic control mechanisms have been exhausted and have not achieved their goal to improve the operation of the local government.

The local government operates within the discretion granted to it by certain regulatory enactments, and its operation must comply with administrative values and comprehension of good governance grounded in democratic traditions. Regulatory enactments grant the local government the right to regulate a significant part of public affairs with its binding regulations. However, the state does not have to ensure a guaranteed and stable level of regulatory autonomy for the local government. The local government can set its own political priorities and develop strategies for achieving these priorities, as long as it benefits the residents of the local government and corresponds to the common framework of the state policy. Thus, the responsibility of the local government to the population is strengthened.

The objective of any local government supervision instrument is to promote full-fledged operation of the local government by balancing the administrative burden of supervision with the benefit obtained as a result of supervision in the public interest. The administrative supervision of the local government is usually implemented in the form of *ex-post* control, evaluating the decisions taken by the local government from the perspective of ensuring legality and public interests. If necessary, the highest level of government may suspend or revoke the implementation of such decisions.

In several states, within the framework of supervision falls the assessment of not only the compliance of municipal decisions with the law, but also their suitability for the respective policy situation, *inter alia*, by analysing the financing conditions of the decision, the implementation schedule, and the impact on the well-being of citizens and households.

14. **The invited person**—***Mg. iur.*** **Edgars Pastars**—expresses the view that the law on dismissal of the local government council is, in essence, an act of application of law, not an act of creation of legal norms. The *Satversme* should be observed in both cases; however, in each case the scope and depth of the process are different. The process of dismissing the local government council should ensure

justice only in one isolated case and should not model and balance the interests of different societal groups.

Within the framework of the control of an abstract legal norm, the Constitutional Court does not have to examine the factual circumstances of the case by analysing a specific case of application of law. If the Constitutional Court provided a detailed interpretation of the application of regulatory enactments within a certain area, then it would, in essence, deal with issues that fall within the competence of other institutions and courts, which must decide on said issues in accordance with the facts and in a due process. The Constitutional Court should provide such an interpretation only if it is necessary for the protection of a person's fundamental rights within the framework of the control of specific legal norms, and only to the extent necessary for drawing conclusions regarding the compliance of a legal norm with the *Satversme*.

The principle of good legislation in its ordinary sense cannot be applied to the process of dismissal of a local government council, because this process is not aimed at the creation of legal norms, i.e., abstract rules of conduct. It is sufficient that the *Saeima* observes the procedure specified in the Rules of Procedure of the *Saeima*, and it is not necessary to demand the observance of such higher standards which could be relevant when deciding other important issues related to the restriction of the principle of local government.

In the view of Edgars Pastars, in assessing the dismissal of the local government council, it is not necessary to grammatically adhere to the wording of the Law "On Local Governments" on repeated violation of the law as a criterion for dismissal of the council. It has been determined by the legislator for the sake of legal clarity for the Cabinet of Ministers in cases when it decides on the submission of the relevant draft law to the *Saeima*. Within the framework of abstract control, the Constitutional Court must assess whether in the course of their activities the institutions have observed the balance contained in the *Satversme*. It follows from the principle of local government contained in Article 101 of the *Satversme* that the dismissal of a local government council cannot be arbitrary and politically motivated. It needs to be associated with violations and

the inability to effectively implement the primary objective of the local government: to meet the needs of the residents. The activities of the municipal council should be evaluated, and the evaluation should be found in the materials of the legislative process. It is also necessary to verify whether the responsible authorities have drawn the attention of the local government council to the violations and the need to avert them.

15. **SIA "Clean R"** informs the Constitutional Court that on 27 November 2019, on the basis of the outcome of the negotiation procedure, it entered into an agreement with the Riga City Council on the provision of municipal waste management services in the administrative territory of Riga from 12 December 2019 until the concession agreement is renewed or a new agreement is concluded with a new waste manager, who has won an open tender organised by the Riga City Council. According to the agreement, SIA "Clean R" had the right not to switch waste management agreements with its customers (original waste producers or holders), if such agreements had already been concluded before the beginning of the negotiation procedure, *inter alia*, up until 14 September 2019. On the other hand, waste management agreements with customers taken over from the SIA "Pilsētvides serviss" had to be concluded by 31 December 2019, and this was sufficient time to do so. In addition, the obligation to pay for the management of municipal waste arises from the law regardless of whether the producer or holder of the waste has a contract for the management of municipal waste. Thus, regardless of the extension of the state of emergency, SIA "Clean R" would still ensure the continuity of the provision of municipal waste management services in the administrative territory of the city of Riga.

16. **SIA "Eco Baltia vide"** informs the Constitutional Court that on 12 September 2019 it entered into an agreement "Provision of municipal waste management services in the administrative territory of the city of Riga in emergency conditions" with the Housing and Environment Department of the Riga City Council, which was in force during the state of emergency. Taking into account

that by 11 December 2019 the tender for the provision of municipal waste management services in the administrative territory of the city of Riga had not been concluded, the Cabinet of Ministers decided to prolong the state of emergency. Otherwise, there would be no legal basis to ensure the continuity of municipal waste management services in Riga.

17. SIA "Lautus" points out that on that on 26 November 2019, on the basis of the outcome of the negotiation procedure, it entered into an agreement with the Riga City Council on the provision of municipal waste management services from 12 December 2019. SIA "Lautus" has provided municipal waste management services in the administrative territory of the city of Riga until 19 May 2020 and has been able to ensure the continuity of the provision of these services.

Findings

18. Section 1 of the Riga City Council Dismissal Law provides:

"With this Law, the *Saeima* dismisses the Riga City Council, taking into account that the Riga City Council:

(1) is unable to take decisions due to the fact that more than half of the total number of deputies of the relevant council has not participated in three consecutive sittings (Section 91, paragraph 1, clause 4 of the Law 'On Local Governments');

(2) allows illegal action and fails to perform the autonomous function of the local government specified in the Law on Waste Management, the Law 'On Local Governments' and other regulatory enactments: to organise municipal waste management (Section 91, paragraph 1, clause 1 of the Law 'On Local Governments')."

The Applicant contests only Section 1, paragraph 2 of the Riga City Council Dismissal Law and indicates that the Riga City Council Dismissal Law is mainly based on the statement that the Riga City Council has committed violations of regulatory enactments. However, Section 1 of the Riga City Council

Dismissal Law provides two alternative grounds for dismissal of the Riga City Council, which correspond to the two different grounds for dismissal of the municipal council specified in Section 91, paragraph 1 of the Law "On Local Governments", and each of them is sufficient for dismissal. The fact that the Riga City Council is to be dismissed on the basis of two independent, unrelated grounds was also emphasised by the *Saeima* Legal Bureau at the meeting of the Budget and Finance Committee, reviewing the Draft Law before the second reading (*see the audio recording of the Budget and Finance Committee meeting of 12 February 2020 at Case Materials, Vol. 8, p. 11*).

Thus, even if the Constitutional Court declared the contested norm inconsistent with the *Satversme* and it would lose its force, the legal consequences of the law would remain unchanged. Namely, such a judgment of the Constitutional Court would not invalidate Article 1, paragraph 1 of the Riga City Council Dismissal Law, which has not been contested by the Applicant and which the Constitutional Court has no grounds to assess. In addition, extraordinary elections of the Riga City Council took place on 29 August 2020, and on 2 October 2020, the newly elected Riga City Council met for the first sitting. Thus, the factual circumstances of the case have changed significantly since its initiation.

Section 29, paragraph 1, clause 6 of the Constitutional Court Law states that until the pronouncement of a judgment in a case, a case may be terminated by a decision of the Constitutional Court in certain (other) cases if continuation of the judicial proceedings is not possible, i.e., in cases not referred to in clauses 1 to 5 of paragraph 1 of this Section. This norm is aimed at, *inter alia*, ensuring the economy of the Constitutional Court proceedings.

Thus, the Constitutional Court must first assess whether the fact that only one of the two grounds specified in the Riga City Council Dismissal Law has been contested and citizens have exercised their right to elect a new Riga City Council cannot be considered as circumstances due to which continuation of proceedings is not possible.

The Constitutional Court has acknowledged that its task is to ensure, in accordance with its competence, the existence of such a legal system in which regulation that does not comply with the *Satversme* or other legal norms of higher legal force would be eliminated as completely as possible, as well as to give its assessment on constitutionally significant issues (*see, e.g., Judgment of 7 April 2009 by the Constitutional Court in the Case No. 2008-35-01, para. 11.2*).

The parties to the case and the invited persons acknowledge that the dismissal of the local government council as a democratically elected representative institution is a last resort that state institutions can use in monitoring the legality of local government activities. The Constitutional Court concludes that the dismissal of the local government council is a constitutionally significant issue and there is a justified interest in assessing the constitutionality of the contested norm, even if only one of the two grounds for dismissal of the Riga City Council is disputed and the newly elected council has already started its work. In addition, the case under review is the first case where the Constitutional Court has had to assess such a legal norm by which the *Saeima* dismisses the local government council. Thus, the Constitutional Court must continue the proceedings in the case.

Consequently, the Constitutional Court must assess the compliance of the contested norm with Articles 1 and 101 of the *Satversme*.

19. The Applicant requests to declare the contested norm inconsistent with Articles 1 and 101 of the *Satversme*, as it considers that the contested norm does not comply with the principles of democracy and local government, as well as the principles of good legislation and proportionality contained in these norms of the *Satversme*.

The Constitutional Court has concluded that if the compliance of a legal act with several legal norms of higher legal force is contested, then the Court must determine, by taking into account the nature of the case under review, the most effective approach to the assessment of this compliance (*see, e.g., Judgment of 15 May 2020 by the Constitutional Court in the Case No. 2019-17-05, para.*

13). In order to do so, the Constitutional Court must ascertain the content of the legal norms of higher legal force: Articles 1 and 101 of the *Satversme*.

19.1. According to Article 1 of the *Satversme*, Latvia is an independent democratic republic. The Constitutional Court has concluded that the general principles of law derived from the basic norm of a democratic state under the rule of law, including the rule of law and the principle of local government, fall within the scope of Article 1 of the *Satversme* (*see, e.g., Judgment of 29 June 2017 by the Constitutional Court in the Case No. 2016-23-03, para. 15.1*).

The scope of Article 1 of the *Satversme* also includes the general principle of the rule of law. According to that principle, all public power is bound by law and may act only within the limits of its powers under the law. In public administration, it is called the principle of administrative legality (*cf. see Judgment of 15 May 2020 by the Constitutional Court in the Case No. 2019-17-05, para. 13.1*). In addition, the law and rights are binding on every state institution, including the legislator himself (*see Judgment of 3 February 2012 by the Constitutional Court in the Case No. 2011-11-01, para. 16*).

The obligation of all state institutions to observe the principle of proportionality in their activities also derives from the basic norm of a democratic state under the rule of law. The principle of proportionality is one of the most important general legal principles of a democratic state governed by the rule of law, and state institutions, when exercising state power, must take it into account in each specific case (*see Judgment of 14 December 2018 by the Constitutional Court in the Case No. 2018-09-0103, para. 14.3*). The Constitutional Court has also acknowledged that the principle of good legislation has been derived from the principle of a state under the rule of law (*see Judgment of 6 March 2019 by the Constitutional Court in the Case No. 2018-11-01, para. 18.1*).

19.2. Pursuant to paragraph 1 of Article 101 of the *Satversme*, every citizen has the right to participate in the work of the state and local governments in the manner prescribed by law, as well as to perform public service. Paragraph 2 of this Article stipulates: “Local governments shall be elected by Latvian

citizens and citizens of the European Union who permanently reside in Latvia. Every citizen of the European Union who permanently resides in Latvia has the rights, as provided by law, to participate in the work of local governments. The working language of local governments is the Latvian language."

Article 101 includes, *inter alia*, the principle of local government and creates a legal basis for the institutional existence and functional activity of local governments. According to this principle, in the institutional aspect, local government is a special form of public administration or management of public affairs—self-government—whose highest body, the council, is democratically directly legitimised, namely, elected by the citizens. In the functional aspect, in accordance with the principles of democracy and local government, public administration should be organised in the alternative, i.e., management of significant local needs and interests should be transferred as close as possible to the citizens themselves and their local government (*cf. see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-32-05, para. 11*).

The Republic of Latvia as a unitary state is characterised by the fact that administrative territorial units, their status, competence, and structure are determined by the central state power. Decentralisation of public administration functions is implemented, *inter alia*, in accordance with the principle of local government by transferring the implementation of certain functions to democratically legitimised local governments. The central government also controls the activities of local governments in accordance with the procedure prescribed by law, strengthening the observance of the rule of law at all levels of public administration (*cf. see Judgment of 20 January 2009 by the Constitutional Court in the Case No. 2008-08-0306, para. 16*).

Thus, both Article 1 and Article 101 of the *Satversme* include, *inter alia*, the principle of local government, which is the basis for the institutional existence and functional activity of a local government. In addition, all state institutions, including local governments, may act only in accordance with the rule of law, within the limits of their statutory competence.

Consequently, the Constitutional Court will consider the compliance of the contested norm with Article 1 of the *Satversme* in conjunction with Article 101, assessing the compliance of this norm with the principles of local government and the rule of law.

20. The Constitutional Court has already repeatedly assessed the legality of activities of the local government and issues of its supervision and concluded that the principle of democracy enshrined in Article 1 of the *Satversme* must be concretised also in conjunction with the principle of local government enshrined in the Charter and citizens' right to participate in public affairs (*see Judgment of 16 April 2008 by the Constitutional Court in the Case No. 2007-21-01, para. 7, and Judgment of 15 May 2020 in the Case No. 2019-17-05, para. 13.1*). In accordance with the first part of Article 3 of the Charter, local government means the right and ability of local authorities to regulate and manage a significant part of state affairs on their own responsibility and in the interests of the local population, within the limits prescribed by law.

In accordance with Section 3, paragraph 1 of the Law "On Local Governments", a local government is a local government which, through the elected representation of citizens—the council—and institutions and establishments established by it ensures the implementation of the function prescribed by law, as well as of the objectives laid down by the Cabinet of Ministers and the voluntary initiatives of the local government in accordance with the procedure provided for in this law and taking into account the interests of the state and the residents of the relevant administrative territory.

The decision-making body of the municipality—the council—is elected in accordance with the Republican City Council and County Council Election Law. The local government council consists of deputies whose rights and obligations are specified in the Law on the Status of Deputies of the Republican County Council and the County Council. In accordance with Section 21, paragraph 1 of the Law "On Local Governments", the council may consider any issue that is within the competence of the relevant local government. The second

paragraph of this Section stipulates that the activities and decisions of the council must be maximally useful. The work of the council is managed by its chairman (*see Law "On Local Governments", Section 25, para. 1*).

According to the Law "On Local Governments", the competence of a local government includes autonomous functions, delegated functions, administrative tasks, as well as voluntary initiatives. The autonomous functions of a local government are specified in Section 15 of the Law "On Local Governments", and they are to be performed in accordance with the procedure provided for in the regulatory enactments. The performance of the autonomous functions is organised by the local government, which bears responsibility for it (*see Law "On Local Governments", Section 7, paras. 1–2*). The Constitutional Court has concluded that the autonomous functions of a local government are those functions due to which local governments exist at all, namely so that the residents of a certain administrative territory could implement their local interests in a democratic procedure. If the legislature has determined that a function is an autonomous function of the local government, then the local government is obliged to implement it and to ensure within its competence that the rights of citizens are implemented in the most appropriate manner (*see Judgment of 29 June 2017 by the Constitutional Court in the Case No. 2016-23-03, para. 15.1*).

Local governments are subordinated to the Cabinet of Ministers and in the area of competence and as intermediate administrative institutions are organisationally part of the unified system of public administration (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-32-05, para. 12*). It follows from Section 5, paragraph 5 of the Law "On Local Governments" that supervision over the activities of local governments within the framework of this law is performed by the Ministry. However, if other public administration institutions or officials establish that the local government council, chairman of the council, his deputy, or other local government institutions do not comply with or violate the *Satversme*, laws, regulations of the Cabinet of Ministers, or court decisions, they are obliged to notify the Ministry.

The competence of the Ministry includes several means of *ex-post* control of the activities of the local government, within the framework of the use of which the legality of the activities of the local government is assessed. One of such means is the evaluation of the legality of decisions adopted by the local government by the Ministry and suspension of the illegal operation of binding regulations or other regulatory enactments issued by the local government or certain points thereof (*see Section 45 of the Law "On Local Governments"*). The Ministry also assesses the legality of the activities of local government officials and institutions, *inter alia* by requesting an explanation from the chairperson of the local government council regarding violations of legal norms, requesting his release, or suspending him from the office (*see the Law "On Local Governments", Section 65, para. 2, Section 93, and Section 94*[1]).

Dismissal of the municipal council is also one of the means of *ex-post* control of the legality of the local government activity. The Constitutional Court has acknowledged that the dismissal of the local government council is an *ultima ratio* measure (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-32-05, para. 14*).

Dismissal of the local government council is the last resort of *ex-post* control of the legality of the activities of the local government council, which has the most severe legal consequences, because as a result of its application a democratically elected institution is dismissed. The special nature of this measure is indicated by the dismissal process of the local government council prescribed by law. Namely, in certain cases, the local government council may be dismissed only by the *Saeima*, which is democratically directly legitimised by the Latvian citizens, through the adoption of a special law, the draft of which is submitted by the Cabinet of Ministers on its own initiative or on the initiative of the Prosecutor General. The constitutionality of the respective law after its adoption may be assessed by the Constitutional Court. Thus, the legislature, the executive, and the judiciary are all involved in the process of dismissing the local government council, thereby ensuring the legality of this process and compliance

with the principle of local government, as well as the observance of the principle of separation of state power.

Consequently, the legality of the activities of the local government council is monitored by various means of *ex-post* control, the ultimate of which is the dismissal of the local government council.

21. The first part of Section 91 of the Law "On Local Governments" provides: "The *Saeima* may dismiss the local government council if it:

(1) repeatedly fails to comply with or violates the *Satversme*, laws, regulations of the Cabinet of Ministers, or fails to comply with court judgments;

(2) repeatedly takes decisions and performs activities in matters which are within the competence of the *Saeima*, the Cabinet, ministries, other public administration institutions, or a court;

(3) has not elected the chairman of the council, his or her deputy, or standing committees within two months after the meeting for the first sitting or after the resignation of the relevant officials or institutions;

(4) is unable to take decisions due to the fact that more than half of the total number of deputies of the relevant council does not participate in three consecutive sittings."

Pursuant to Section 92, paragraphs 1 and 2 of this Law, the local government council is dismissed by a law adopted by the *Saeima*, the draft of which is submitted by the Cabinet of Ministers on its own initiative or upon the proposal of the Prosecutor General. Thus, the legislature has determined, firstly, the cases in which the *Saeima* may dismiss the local government council, a democratically elected institution, and, secondly, also the special procedural order according to which this is to be done.

The legal doctrine recognises that the parliamentary control over the legality of the activities of the local government council implemented by the *Saeima* is related to the political assessment of the legality of these activities (*see: Stucka A. Legal characteristics of the Latvian local government system and local government reforms. Riga: Latvijas Vēstnesis, 2019, p. 109*). However,

although the dismissal of the local government council requires the adoption of a law by the *Saeima* and therefore such a decision is, to a certain extent, political, such a law must be based on legal arguments.

In assessing issues related to the activity of the local governments, the Constitutional Court has concluded that it evaluates legal arguments. Legal considerations include provisions that must be observed not because they would in themselves ensure the desired economic, political, and social situation, but because it is required by the rule of law (*see, e.g., the Decision on the termination of proceedings of 20 January 2009 by the Constitutional Court in the Case No. 2008-08-0306, para. 12*). Moreover, even when evaluating strongly "political" decisions, the Constitutional Court has full competence to verify whether the *Satversme* has been observed in drafting and adoption of the respective law (*cf. see Judgment of 29 October 2020 by the Constitutional Court in the Case No. 2019-29-01, para. 16*).

In assessing the legal norm dismissing the local government council, it must be taken into account that this measure applies to a democratically elected institution as well as restricts the right of local government deputies to participate in the work of the council as provided for in Article 101 of the *Satversme*. In a democratic state governed by the rule of law, a law dismissing a municipal council cannot be passed arbitrarily on the sole basis of political considerations. The adoption of such a law must be based on specific facts and their legal assessment.

Consequently, the law on dismissal of the local government council can be adopted only in the cases specified in the Law "On Local Governments", in accordance with the legal procedural order, based on specific facts and legal arguments.

22. The contested norm has been adopted with reference to Section 91, paragraph 1, clause 1 of the Law "On Local Governments". A local government council may be dismissed on the basis of this norm if, firstly, it does not comply with or violates the *Satversme*, laws, regulations of the Cabinet of Ministers, or does not

comply with court judgments and, secondly, if the violations of legal norms committed by it are recurrent.

The contested norm mentions as the basis for dismissal of Riga City Council the fact that it has committed illegal activities and has not fulfilled the autonomous function of the municipality specified in the Waste Management Law, the Law "On Local Governments", and other regulatory enactments, i.e., to organise the management of municipal waste. It follows from the preparatory materials of the Draft Law, including the annotations of the Draft Law, that the Riga City Council was accused of long-term, recurrent, even systematic violations in the field of municipal waste management. *Inter alia*, the Riga City Council was accused of the failure to comply with regulatory enactments and the judgment in the case No. 2012-01-01, i.e., until 15 September 2019 the agreements with waste managers in force in the city of Riga were such that were not concluded within the framework of public procurement procedure, that binding regulations in accordance with regulatory enactments that would regulate municipal waste management were not issued, and that by 31 December 2014, no separate collection system had been set up for several categories of waste. These circumstances are also mentioned in the response.

Conversely, the Applicant considers that the Riga City Council was able to perform its autonomous function in accordance with the procedures specified in regulatory enactments and all violations, even if they had been committed, had been eliminated during the adoption of the Riga City Council Dismissal Law. The dismissal of the Riga City Council was politically motivated, and it did not change anything regarding the interests of the residents of Riga in connection with the management of municipal waste. In response to the Ministry's letters, the Riga City Council, just as its representatives at the meetings of the Budget and Finance Committee, has expressed the opinion that the autonomous function of organisation of municipal waste management is performed in accordance with regulatory enactments and allegations of violations of legal norms are unfounded.

The invited persons have expressed different views as to whether there were sufficient grounds to adopt the contested norm. For example, the Ministry of Justice points out that in this case the inactive and non-regulatory actions of the Riga City Council in the performance of the autonomous function of the local government of organisation of municipal waste management must be taken into account, as well as the systematic violations of legal norms (*see Case Materials, Vol. 1, pp. 119–123*). The Ministry of of Environmental Protection and Regional Development also emphasises that until 15 September 2019 the agreements with waste managers in force in Riga were such that did not comply with the regulatory enactments on public procurement and the judgment in the case No. 2012-01-01. The Ministry has repeatedly pointed out the violations to the Riga City Council, but the Riga City Council has long hesitated to eliminate them (*see Case Materials, Vol. 1, pp. 124–134*). Conversely, the Latvian Association of Local and Regional Governments and the association "Latvian Association of Large Cities" express the view that the Riga City Council has not committed such substantial violations that would justify its dismissal as a democratically elected institution (*see Case Materials, Vol. 4, pp. 116 and Vol. 8, pp. 19–22*).

As such, the views of the parties to the case, the invited and other persons as to whether such violations of legal norms that would justify the dismissal of the Riga City Council have been established in the process of development and adoption of the contested norm differ. Views also differ as to whether the contested norm has been adopted in accordance with the appropriate procedure.

Thus, in order to assess the constitutionality of the contested norm in the case under review, the Constitutional Court must ascertain:

(1) whether the procedure for the dismissal of the local government council provided in legal norms, including the Law "On Local Governments" and the Rules of Procedure of the *Saeima*, have been complied with;

(2) what is considered to be a violation of regulatory enactments within the meaning of Section 91, paragraph 1, clause 1 of the Law "On Local Governments" and whether the Riga City Council had committed such violations;

(3) whether in these particular circumstances the dismissal of the local government council as a means of *ex-post* control of the legality of local government activities was necessary in a democratic state governed by the rule of law.

23. First of all, the Constitutional Court must assess whether, by adopting the contested norm, the procedure for the dismissal of the local government council provided for in legal norms has been complied with.

In a democratic state governed by the rule of law, the branches of the government, including the legislature, must strive to increase everyone's trust in the state and their rights, as well as their understanding of the democratic process. Adherence to the principle of good legislation contributes to this goal. The Constitutional Court has clarified that the elements of the principle of good legislation include, *inter alia*, that the general principles of law, as well as the procedural preconditions and rights specified in the *Satversme* and the Rules of Procedure of the *Saeima* must be observed in the legislative process. The legislature itself must assess the compliance of the legal norms provided for in the draft law with the legal norms of higher legal force, as well as harmonise these norms with the already existing norms in the legal system, duly substantiate the necessity of these norms, and consider possible alternative solutions. The legislative process must focus on developing a sustainable legal framework. In a democratic state governed by the rule of law, the legislator is also obliged to inform the public in a timely and appropriate manner and, as far as possible, to involve the public and consult interested parties (*see Judgment of 6 March 2019 by the Constitutional Court in the Case No. 2018-11-01, para. 18.1*).

It follows from Article 92 of the Law "On Local Governments" that the law on dismissal of a local government council differs from other laws in that its draft may be submitted to the *Saeima* only by the Cabinet of Ministers on its own initiative or by the Prosecutor General. The *Saeima* considers the Draft Law in accordance with the Rules of Procedure of the *Saeima*. When assessing whether the contested norm has been established by a law adopted in due order, it must

be taken into account that in adopting such a norm the legislature actually acts as an enforcer of the law and, by establishing certain factual circumstances, makes a decision on dismissal of the local government council, which is then appropriately substantiated in the course of the legislative procedure. Therefore, when assessing the compliance of the process of adoption of a legal norm with the principle of good legislation dismissing the local government council, the primary consideration must be given to the compliance of this process with the procedure provided for in the Law "On Local Governments" and the Rules of Procedure of the *Saeima*, as well as those clarificatory elements of the principle of good legislation that concern the involvement of the public and interested persons in the legislative process and the need for sufficient justification for the adoption of the contested norm.

23.1. The Draft Law developed by the Ministry was submitted to the Cabinet of Ministers on 12 December 2019, having previously received approval from the Ministry of Justice and the Ministry of Finance. On 16 December 2019, the State Chancellery issued an opinion on the Draft Law. At its sitting on 17 December 2019, the Cabinet of Ministers supported the Draft Law and forwarded it to the *Saeima*, requesting that it be declared urgent and convening an extraordinary sitting of the *Saeima* on 18 December 2019 in accordance with the first paragraph of Article 38 of the *Saeima* Rules of Procedure (*see minutes of the sitting of 17 December 2006, No. 59, § 66*). In the first reading, the Draft Law was adopted on 19 December 2019, when it was also decided to review the Draft Law as a matter of urgency, but in the second reading: on 13 February 2020. The law was promulgated by the President on 24 February 2020 and entered into force on 25 February 2020.

23.2. The Applicant considers that before submitting the Draft Law to the *Saeima*, the Cabinet of Ministers should have consulted with the Latvian Association of Local and Regional Governments and listened to the opinion of the Riga City Council. In its written reply, the *Saeima* points out that whilst hearing the opinion of the Riga City Council at a sitting of the Cabinet of Ministers would be in line with the principle of good governance, the Cabinet of

Ministers does not have an obligation to do so. Conversely, the Cabinet of Ministers points out that this was not done due to haste.

Pursuant to Section 86, paragraph 1, clause 1 and paragraph 4 of the Law "On Local Governments", the Cabinet of Ministers shall, in accordance with the procedure established by it, co-ordinate with the local governments issues affecting the interests of all local governments, including draft laws concerning local governments. In accordance with paragraph 2 of this Section, a local government association established in accordance with the requirements of Section 96 of the Law "On Local Governments", i.e., the Latvian Association of Local and Regional Governments shall represent the local governments in the co-ordination process. In accordance with the Cabinet of Ministers Regulation No. 300 "Rules of Procedure of the Cabinet of Ministers", paragraph 91.5, if the project announced must be coordinated with local governments in accordance with the Law "On Local Governments", an opinion (approval) on the announced project is required, *inter alia*, from the Latvian Association of Local and Regional Governments. In addition, Section 87 of the Law "On Local Governments" stipulates that issues that affect certain interests of a local government and cannot be considered in accordance with Section 86 of this law shall be considered by the Cabinet of Ministers in accordance with the Rules of Procedure of the Cabinet of Ministers.

The Constitutional Court has concluded that the principle of local government does not require a specific form and content of the hearing procedure, insofar as it is not specified in laws (*see the Decision on the termination of proceedings of 20 January 2009 by the Constitutional Court in the Case No. 2008-08-0306, para. 13.1*). In addition, the relations between legal persons of public law must be guided by the principle of procedural economy and therefore direct or indirect reference to previous instructions or provided information is permissible (*cf. see Judgment of 9 March 2004 by the Constitutional Court in the Case No. 2003-16-05, para. 1*). Within the framework of the democratic process of drafting regulatory enactments, hearing the opinion of the Latvian Association of Local and Regional Governments and

the relevant local government council in the process of drafting the law should be viewed positively. However, the Constitutional Court has already concluded that the law on dismissal of a local government council is not a law in the usual sense of the word, but a means of *ex-post* control of the legality of local government activities, within which violations of legal norms committed by a particular local government council are assessed. Therefore, in accordance with Section 86 of the Law "On Local Governments", the Cabinet of Ministers is not obliged to co-ordinate such a draft law with the Latvian Association of Local and Regional Governments.

At the time when the Draft Law was being drafted and reviewed by the Cabinet of Ministers, the opinion of the Riga City Council was already known to the Ministry from mutual correspondence. *Inter alia*, in the letter No. RD-19-2536-nd of 29 November 2019, the Riga City Council explained to the Ministry in detail its opinion regarding the violations of legal norms indicated by it in the annotation of the Draft Law, as well as emphasised that there are no grounds for the dismissal of the Riga City Council (*see Case Materials, Vol. 2, pp. 99–105*). On 17 December 2019, the Riga City Council also submitted its written opinion to the Cabinet of Ministers (*see Case Materials, Vol. 3, pp. 129–140*). Equally, the Latvian Association of Local and Regional Governments expressed its opinion on the Draft Law in the letter No. 201912/INIC651/SP1685/NOS926 of 17 December 2019, and its representative also participated in the sitting of the Cabinet of Ministers at which the Draft Law was reviewed (*see Case Materials, Vol. 3, pp. 121–128*).

Thus, in the process of drafting the Law, the opinion of the Riga City Council and the Latvian Association of Local and Regional Governments was duly heard.

23.3. The Constitutional Court has concluded that the assessment performed by other state institutions, for example, the ministry responsible for the sector, does not release the *Saeima* from the obligation to assess the relevant issue itself (*see Judgment of 21 October 2009 by the Constitutional Court in the*

Case No. 2009-01-01, para. 11.3). The hearing of interested parties as a part of the process of drafting regulatory enactments is viewed positively; however, the legislative process cannot be made dependent on the positive or negative attitude of persons towards the draft regulatory enactment (*see Judgment of 2 May 2012 by the Constitutional Court in the Case No. 2011-17-03, para. 14.2*).

It follows from the materials of the case that the circumstances underlying the adoption of the contested norm were assessed in essence both at the sitting of the Budget and Finance Committee on 19 December 2019 before the submission of the Draft Law to the *Saeima* for the first reading, and on 14 January, 4 February, and 12 February sittings before the submission of the Draft Law to the *Saeima* for the second reading. Representatives of ministries, including the Ministry of Environmental Protection and Regional Development, representatives of the Legal Bureau of the *Saeima*, as well as representatives of the Riga City Council and the Latvian Association of Local and Regional Governments participated in all meetings of the Committee. The minutes of the meetings of the responsible Committee and audio recordings indicate that the objections and suggestions of the Ministry, the Riga City Council, and the Latvian Association of Local and Regional Governments, as well as the opinion of the Legal Bureau of the *Saeima* were heard several times during the meetings of the Committee. At the request of the Committee, the Ministry prepared a table summarising the violations committed by the Riga City Council.

This table was examined at the meeting of the Committee, and the opinion of the Riga City Council on each of the violations of legal norms committed by the Riga City Council mentioned in the table was heard. The deputies who had submitted proposals regarding the wording of the contested norm also expressed their opinion at the hearings of the Committee. Taking into account all available information, the Committee decided to move the Draft Law to both the first and second readings (*see minutes of the meetings of the Budget and Finance Committee of 19 December 2019, 14 January 2020, 4 February and 12 February 2020, available: www.Saeima.lv, as well as the audio recordings of these hearings in the Case Materials, Vol. 8, p. 11*).

At the sittings of the *Saeima* upon submitting the Draft Law to the responsible committee and adopting it on the first reading on 19 December 2019 and in the second reading on 13 February 2020, the deputies also expressed their views on whether the Riga City Council violations of legal norms were severe enough to apply the ultimate means of *ex-post* control of the activities of the local government: dismissal of the local government council (*see the transcript of the sittings of the 13th* Saeima *of 18 December and 19 December 2019, as well as of 13 February 2020*).

Thus, in the process of adopting the contested norm in the *Saeima*, the recurrent violations of the legal norms in the field of municipal waste management committed by the Riga City Council were assessed and the views of the interested parties were heard.

23.4. The opinion of the Presidium of the *Saeima* of 17 December 2019 included a proposal to determine that the State Administration and Local Government Committee is responsible for the Draft Law. At the sitting of 18 December 2019, the *Saeima* decided to transfer the Draft Law to the Budget and Finance Committee, determining it to be the responsible committee. The Applicant indicates that the transfer of the Draft Law to the Budget and Finance Committee is considered to be a violation of the principle of good legislation, as its transfer to the State Administration and Local Government Committee would have been more in line with parliamentary traditions.

Article 25 of the *Satversme* provides: "The *Saeima* shall establish committees and determine the number of members and their duties. Committees have the right to require of individual ministers or local government authorities information and explanations necessary for the work of the committees, and the right to invite to their sittings responsible representatives from the relevant ministries or local government authorities to furnish explanations. Committees may also carry on their work between sessions of the *Saeima*." The Constitutional Court has acknowledged that that the Rules of Procedure of the *Saeima* entrust a significant part of the work of preparation of the draft law to the committees of the *Saeima*. The responsible committee shall ensure that the

draft law is fully prepared for consideration at the sitting of the *Saeima* (*see Judgment of 19 December 2011 by the Constitutional Court in the Case No. 2011-03-01, para. 18*).

The legal doctrine recognises that the committees of the *Saeima*, just as committees of most other parliaments, have a deliberate specialisation orientation and the principle of specialisation is the main criterion for determining that a particular committee is responsible for a draft law (*see: Balodis R. Article 25 commentary. Book: Balodis R. (ed.) Comments on the Constitution of the Republic of Latvia, Chapter II, Saeima, Riga: Latvijas Vēstnesis, 2020, pp. 390–391*). However, as a legislature directly democratically legitimised by the people, the *Saeima* enjoys autonomy in its operation, *inter alia*, in matters of the organisation of its work. Thus, the decision to transfer the draft law to a specific committee is considered to be a matter of the work organisation of the *Saeima*, which the *Saeima* may decide within the framework of its discretion. In addition, although the committee prepares the draft law and decides on its submission to the *Saeima*, the final decision regarding the draft law and each specific proposal is made by the *Saeima*. The conclusion of the Constitutional Court that the Budget and Finance Committee has duly assessed the justification for the adoption of the contested norm and has also heard the interested parties in several sittings must also be taken into account (*see para. 23.3 of the Judgment*).

Taking into account what has been acknowledged in this paragraph of the Judgment, the Constitutional Court concludes that no violations have been committed in the process of drafting and adopting the contested norm.

Consequently, when adopting the contested norm, the procedure for the dismissal of the local government council provided for in the legal norms has been observed.

24. The Constitutional Court must assess what is considered to be a violation of regulatory enactments within the meaning of Section 91, paragraph 1, clause 1

of the Law "On Local Governments" and whether the Riga City Council had committed such violations.

24.1. Section 91, paragraph 1, clause 1 of the Law "On Local Governments" mentions the recurrence of the violations as a criterion characterising the violations committed by the local government council. The Applicant and several invited persons, including the Latvian Association of Local and Regional Governments, express the following view: if a decision is made to dismiss the City Council, then its violations must be such as to substantiate the need for dismissal and justify the restriction of the citizens' will expressed in the elections of the city council.

It follows from the principle of local government and the whole system of the Law "On Local Governments" that a local government council as a democratically elected institution may be dismissed only if it repeatedly commits substantial violations of legal norms. Consequently, the local government council cannot be dismissed for any violation committed by it, even if it has been recurrent.

The substantialness of the violations of the legal norms committed by the local government council is evidenced, *inter alia*, by the consequences that these violations cause or may cause in relation to the legitimate interests of the residents and the whole society, as well as the systematic nature of these violations, which is also indicative of the fact that the local government council allows for the violation to take place repeatedly. Non-compliance with a valid court judgment clearly establishing the unlawfulness of an act of a local government is also a significant violation of a legal norm and endangers the rule of law and the legal order. In a democratic state governed by the rule of law, a situation where one of the state institutions, including the local government, would not comply with the court's decision cannot be permitted.

It follows from the principle of local government and the whole system of the Law "On Local Governments" that a local government council as a democratically elected institution may be dismissed only if it repeatedly commits significant violations of legal norms. Consequently, the municipal council

cannot be dismissed for any violation committed by it, even if it has been repeated.

The opinion of the Applicant, as well as of the Riga City Council and the *Saeima* Legal Bureau that the local government council cannot be dismissed for violations committed by another (previous) convocation of the council is substantiated. This is one of the reasons why the violations of the council for which it is dismissed do not have to be established by a court judgment that has entered into force. Namely, the duration of legal proceedings may exceed the remaining term of office of the local government council, in which case the meaning of this means of monitoring the legality of the municipal activities would be lost. However, the central government has the right to initiate the process of dismissal of the local government council only if after repeated violations of legal norms it is necessary to act immediately in order to restore the rule of law. Similarly, the dismissal of the local government council would be meaningless if the council could be dismissed only for the existing violations, without taking into account the previously committed violations.

At the meeting of the Budget and Finance Committee, the Latvian Association of Local and Regional Governments has expressed the view that violations by the local government council can be established by the Minister of Environmental Protection and Regional Development only by exercising the right to suspend illegal local government legislation or its certain points provided for in Section 49, paragraph 1 of the Law "On Local Governments" (*see audio recordings of the meetings of the Budget and Finance Committee on 19 December 2019 and 4 February 2020, Vol. 8, p. 11*). However, this is an independent means of monitoring the activities of the local government which is aimed at ensuring that an illegal normative act is not applied in a democratic state governed by the rule of law. If the local government council submits a relevant application, the Constitutional Court evaluates the legality of the minister's order and thus also removes any doubts as to whether the local government's action was legal or not. In addition, not all violations of a local government can be eliminated by suspending the operation of any of its regulatory enactments.

Thus, the local government council may be dismissed if since its election (commencement of work) it has committed recurrent and substantial violations of legal norms. These violations are to be duly assessed in the process of drafting and adoption of the relevant law on the dismissal of the local government council.

24.2. The Constitutional Court has concluded that the annotation of the draft law is one of the sources that provides information on the necessity, application, and impact of a legal act on various areas. It has an informative meaning: it introduces the motivation of the submitter of the draft law. The substantiation included in the annotation allows the public to gain an idea of the considerations that were the basis for the adoption of the legal norm (*see Judgment of 12 February 2020 by the Constitutional Court in the Case No. 2019-05-01, para. 19.1.2*). As such, the violations of legal norms serving as the basis of dismissal of the Riga City Council had to be indicated in the annotation of the Draft Law.

The Constitutional Court has already concluded that the annotation of the Draft Law prepared by the Ministry contains references to the violations of legal norms committed by the Riga City Council, including the inability to implement its autonomous function of organisation of municipal waste management and to comply with the judgment in the case No. 2012-01-01. In addition, following the announcement of the Competition Council on the interim settlement, the Riga City Council has not taken any action to ensure the continuity of the provision of municipal waste management services and that a threat of an anthropogenic catastrophe is not created. If on 15 September 2019 the collection and removal of municipal waste in the administrative territory of the city of Riga were suspended or significantly hindered, then potential damage to the environment and public health would have occurred. Given that in this situation the Riga City Council was unable to perform the respective autonomous function, the Cabinet of Ministers had to declare a state of emergency in the administrative territory of the city of Riga. Moreover, even during the state of emergency, the Riga City Council did not take appropriate action to ensure a long-term, rather than

temporary solution, according to which municipal waste management services would be provided in accordance with the requirements of regulatory enactments. Therefore, the state of emergency in the city of Riga had to be extended.

24.3. The annotation of the draft law also refers to repeated letters of the responsible institutions to the Riga City Council, requesting explanations regarding the violations of the legal norms and calling for their elimination, as well as the responses of the Riga City Council to these calls. After 22 June 2017, when the convocation of the Riga City Council subject to the Riga City Council Dismissal Law started its work, the Ministry has repeatedly drawn the Council's attention to the violations it has committed in performing its autonomous function in the field of municipal waste management. For example, in the letter No. 1-132/2746 of 27 March 2019 and in the letter No. 1-132/6933 of 19 July 2019, the Ministry reminded the local government that by 31 December 2014 the municipalities had to set up a separate waste collection system and provide such services to the population at least for paper, plastic, glass, and metal waste. In its letter of 19 July 2019, the Ministry also pointed out violations in connection with the concession agreement concluded within the framework of the public–private partnership and the need to update the Binding Regulations No. 90 or issue new binding rules. In the letter of the Ministry No. 1-132/8208 of 29 August 2019 and in the letter No. 1-132/8506 of 9 September 2019, the Chairman of the Riga City Council has been requested to provide an explanation of how the municipality plans to ensure the continuity of municipal waste management services. In the letter No. 1-132/8777 of 17 September 2019, letter No. 1-132/9242 of 1 October 2019, letter No. 1-132/10055 of 25 October 2019, and letter No. 1-132/10626 of 14 November 2019, the Ministry has requested the Riga City Council to provide information on Order No. 432 and on how the provision of municipal waste management services would be ensured after 11 December 2019, when the state of emergency declared by the Cabinet of Ministers will end. In the letter No. 1-132/10798 of 21 November 2019, on the basis of Section 94^{1} of the Law "On Local Governments", the Ministry has

requested an explanation from the Chairman of the Riga City Council regarding long-term violations in the field of municipal waste management, as well as invited to submit a detailed action plan with actions, responsible persons, and dates ensuring the continuity of the provision of municipal waste management services to the population in a manner according to the law and taking into account that the existing waste management agreements will expire on 12 December 2019. In these letters, the Ministry has also explained the nature of the violations committed by the Riga City Council and the necessity to ensure the provision of municipal waste management services in accordance with the requirements of regulatory enactments (*see Case Materials, Vol. 2, pp. 5–8, 13–15, 72–75, 83–85, 94, 97–98*).

In addition, the Competition Council has repeatedly drawn the attention of the Riga City Council to the risks and possible violations of the regulatory enactments regulating competition in the selection of a municipal waste manager; for example, in the letter No. 1-11/569 of 28 April 2017, it pointed out possible violations of competition law in the Riga City Council selecting a municipal waste manager within the framework of a public–private partnership (*see Case Materials, Vol. 2, pp. 3–4*). Neither the previous convocation nor the convocation of the Riga City Council subject to the Riga City Council Dismissal Law eliminated the shortcomings mentioned by the Competition Council, and on 14 June 2019 a concession agreement was concluded. On 18 July 2019, the Competition Council initiated an investigation, but on 9 September 2019, it adopted a decision on interim measures, suspending the operation of the concession agreement.

It follows from the materials of the case that in response to the requests for information of the Ministry the Riga City Council has repeatedly stated its opinion, trying to substantiate the fact that it is acting legally. Namely, the opinion of the Riga City Council is set out in the letter No. DMV-19-2493-nd of 29 July 2019, letter No. RD-19-1882-nd of 6 September 2019, letter No. RD-19-1902-nd of 10 September 2019, letter No. RD-19-1909-nd of 11 September 2019, letter No. RD-19-1971-nd of 18 September 2019, letter No. DMV-19-

3788-nd of 20 November 2019, letter No. RD-19-2536-nd of 29 November 2019, letter No. RD-19-2545-nd of 3 December 2019, and in the letter No. DMV-19-4029-nd of 10 December 2019. In the letter No. RD-19-2632-nd of 17 December 2019, addressed to the State Chancellery, the Ministry, and the Ministry of Justice, the Riga City Council has provided its opinion on the violations of legal norms mentioned in the annotation of the Draft Law (*see Case Materials, Vol. 1, pp. 42–45, Vol. 2, pp. 16–19, 74–82, 95–96, 99–105, 112–113, Vol. 3, pp. 129–140*).

Thus, the responsible institutions have repeatedly called on the Riga City Council to prevent violations in the field of municipal waste management, and the Riga City Council has expressed its opinion on these violations.

24.4. In order to assess the alleged violations of the legal norms by the Riga City Council, it is necessary to consider the relevant field and the autonomous function of the local government in the performance of which these violations have taken place. *Inter alia*, the importance of the function of municipal waste management for residents and its impact on their health and well-being, as well as their right to live in a wholesome environment must be taken into account. It is also necessary to take into account the consequences of inability to perform this function in a city as large as Riga, where more than 40 percent of all municipal waste produced in Latvia is generated (*see the annotation to the Draft Law*).

The application states that the Riga City Council has successfully provided municipal waste management services to the residents, therefore there were no grounds to prolong the state of emergency in the city of Riga and to dismiss the Riga City Council. However, the Constitutional Court has acknowledged that the local government has the discretion in the implementation of its autonomous competence, having to take into account only the framework established by the *Satversme* and other external regulatory enactments and the legitimate interests of the residents of the respective administrative territory (*cf. see Judgment of 19 December 2011 by the Constitutional Court in the Case No. 2019-17-05, para. 16.1*). Consequently, it does not suffice that the local

government simply performs its autonomous function at its discretion by providing the relevant services to the population. According to the principle of the rule of law, the local government must perform each autonomous function legally, in accordance with the provisions of legal norms.

The organisation of municipal waste management as an autonomous function of the local government is mentioned in Section 15, paragraph 1 of the Law "On Local Governments". Municipal waste management is regulated both by the Law on Waste Management and regulations of the Cabinet of Ministers issued on the basis thereof, as well as other regulatory enactments, for example, in the field of public procurement. Section 8 of the Law on Waste Management lays down the competence of the local government in the field of waste management. Paragraph 1, clause 3 of this Section stipulates, *inter alia*, that a local government shall issue binding regulations regarding the management of municipal waste in its administrative territory, determining the division of this territory into municipal waste management zones and other issues. The municipality also performs other duties in the field of municipal waste management, including the organisation of separate collection of waste in its administrative territory in accordance with the national waste management plan and regional plans (*see Section 8, paragraph 1, clause 6 of the Waste Management Law*).

Pursuant to Section 18, paragraph 1 of the Waste Management Law, the local government shall select a public procurer who will perform the collection, transportation, reloading, sorting, and storage of municipal waste and household construction waste in the relevant municipal waste management zone, on the basis of the criterion of the most economically advantageous tender and in accordance with the procedure provided for in the regulatory enactments regulating public–private partnerships.

The requirement to apply the procurement procedure upon the selection of the municipal waste management service providers by the local government is aimed at promoting competition, efficient use of state and local government funds, reduction of service fees paid to the population, and ultimately ensures

the well-being of the entire society. In the judgment in the case No. 2012-01-01, the Constitutional Court declared the first sentence of paragraph 12 of the Transitional Provisions of the Waste Management Law to be inconsistent with Article 1 of the *Satversme* and invalid as of 1 July 2013, insofar as it relates to local government agreements with waste managers concluded without application of or by inappropriately applying regulatory enactments regarding public procurement (*see Judgment of 6 December 2012 by the Constitutional Court in the Case No. 2012-01-01, paras. 15 and 18*).

As such, the Riga City Council was not allowed to act arbitrarily in the performance of its autonomous function of organisation of municipal waste management; it had to comply with both regulatory enactments and the judgment in the case No. 2012-01-01.

24.5. In accordance with Section 32, paragraph 1 of the Constitutional Court Law, the judgment of the Constitutional Court is final and enters into force at the moment of its promulgation. The second paragraph of this Article determines that the judgment of the Constitutional Court and the interpretation of the relevant legal norm provided therein is mandatory for all state and local government institutions (including courts) and officials, as well as natural and legal persons. Thus, the judgment of the Constitutional Court is generally binding.

It followed from the judgment in the case No. 2012-01-01 that on 1 July 2013 expire those municipal agreements with waste managers that have been entered into without applying or by improperly applying regulatory enactments regarding public procurement. Although the Law on Waste Management has been amended several times since the entry into force of the judgment in the case No. 2012-01-01, the obligation imposed on local governments to enter into agreements with waste managers in accordance with the procedure provided for in the regulatory enactments regulating public procurement or public–private partnerships has remained unchanged. Neither the previous convocation nor the convocation of the Riga City Council subject to the Riga City Council Dismissal

Law had ensured the implementation of the said judgment and had not concluded such agreements with waste managers that would comply with the requirements of regulatory enactments. An open tender for municipal waste management in the city of Riga was announced only on 11 December 2019, within the framework of which agreements with waste managers were concluded in February 2020. Thus, the provision of municipal waste management services in accordance with the requirements of legal norms could be ensured within a few months, even if at the same time work was underway to establish a new municipal waste management system.

Moreover, the dismissed Riga City Council had not taken appropriate action since the beginning of its operation to ensure the establishment of a separate sorting system for municipal waste, although in accordance with the regulatory enactments this had to be done already during the previous term, until 31 December 2014. This violation was also intended to be eliminated only with the introduction of the new municipal waste management system.

The Constitutional Court concludes that recurrent and substantial violations of legal norms can be established in the activities of the Riga City Council when organising the management of municipal waste. For years, even during the term of the dismissed Riga City Council, the management of municipal waste in Riga was organised in violation of legal requirements, thus arbitrarily violating the legitimate interests of the residents and the entire society, as well as endangering the rule of law.

Consequently, the violations of legal norms committed by the Riga City Council in the field of municipal waste management, viewed in conjunction, shall be recognised as recurrent and substantial violations.

25. The Constitutional Court must also assess whether in these particular circumstances the dismissal of the local government council as a means of *ex-post* control of the legality of local government activities was necessary in a democratic state governed by the rule of law.

The Constitutional Court has recognised that the power relations between a higher level of government and a lower level of government are characterised by the principle of subsidiarity. According to this principle, a higher level of government may intervene if the lower level is unable to perform its tasks properly, and conversely, the same principle prohibits a higher level from interfering if the lower level is able to perform its tasks properly. The principle of subsidiarity in itself does not completely prevent a higher level of government from interfering in the implementation of a lower level of competence, but it does determine the scope and required intensity of this interference (*see the Decision on the termination of proceedings of 20 January 2009 by the Constitutional Court in the Case No. 2008-08-0306, para. 14.1*). It follows from the principle of the rule of law that the state has an obligation to monitor the local government's compliance with the law and, if necessary, to ensure that it is complied with. The supervisory authority has the opportunity to choose the most appropriate means of *ex-post* control in the specific case (*see Judgment of 29 June 2018 by the Constitutional Court in the Case No. 2017-32-05, para. 14*). In addition, the third paragraph of Article 8 of the Charter stipulates that administrative supervision over local governments must be exercised in such a way as to ensure that the intervention of the controlling authority is proportionate to the importance of the interests which it is intended to protect.

The Constitutional Court has already concluded that in drafting and adopting the contested norm, the repeated violations of legal norms committed by the Riga City Council and their substantialness were assessed. In addition, the responsible authorities had repeatedly drawn the attention of the Riga City Council to these violations and had called for their elimination. The Ministry had also requested explanations from the Riga City Council, and the Riga City Council had provided them (*see paras. 23.3, 24.2, and 24.3 of this judgment*).

The years-long correspondence between the Ministry and the Riga City Council shows that the Riga City Council has not considered it necessary to eliminate the violations in the organisation of municipal waste management and has delayed the legal resolution of the situation on the pretext that a new

municipal waste management system is being developed. Even after this new system did not work and the Cabinet of Ministers had to declare a state of emergency, the actions of the Riga City Council were not timely and sufficient so as to create a permanent solution in the field of municipal waste management in accordance with the legal norms. Conversely, the Cabinet of Ministers acted in a timely manner and on 3 December 2019 decided to protract the emergency situation, as some waste producers or holders had not yet concluded agreements with waste managers. Waste managers also confirmed that had the Cabinet of Ministers not decided to prolong the state of emergency, waste managers would have had no legal basis to provide municipal waste management services in Riga (*see the information provided by SIA "Eco Baltia vide" in the Case Materials, Vol. 1, pp. 117–118*). In order to prevent similar situations from arising in the future, on 30 January 2020, the *Saeima* passed the law "Amendments to the Waste Management Law". These amendments provided, *inter alia*, that if a local government has not concluded a waste management agreement, it may continue to co-operate with the existing waste manager until the conclusion of a new agreement.

The purpose of the Riga City Council Dismissal Law was, first of all, to prevent a situation where the council not only allows for recurrent and substantial violations of legal norms, but also ignores the repeated warnings of the responsible institutions. The attitude and the illegal actions of the Riga City Council in implementing its autonomous function indicate that the prevention of violations would not be achieved by other means of monitoring the legality of municipal activities at the disposal of the Ministry, for example, by convening a Riga City Council meeting setting its agenda.

The adoption of the contested norm also took into account the importance of municipal waste management as an autonomous function of the local government and the need to carry it out properly and effectively, which stems from the considerable impact of this area on the right to live in a wholesome environment, public health, and welfare and sustainable development. This

effect on the legal interests of the society and the goals of environmental protection and sustainable development is even greater in a city as large as Riga.

Thus, in these circumstances, the dismissal of the Riga City Council as a means of *ex-post* control of the legality of the activities of the local government was necessary in a democratic state governed by the rule of law.

Consequently, the contested norm complies with Articles 1 and 101 of the *Satversme*.

26. The Constitutional Court has recognised that in a democratic state governed by the rule of law, relations between the government and local governments must be construed in the form of a dialogue, observing the principle of good faith and mutual respect to ensure efficient state administration and use of resources (cf. see *Judgment of 15 May 2020 by the Constitutional Court in the Case No. 2019-17-05, para. 18*). The local government council, which is incorporated in the public administration system of the state, must comply with these principles.

If the responsible institution has indicated possible violations of legal norms to the local government council, the council must eliminate these violations or turn to the responsible institution in order to reach a legal solution in the specific situation. The actions of all state institutions must be aimed at achieving common goals: ensuring the legitimate interests of the society and the rule of law.

The Constitutional Court draws the attention of the Cabinet of Ministers and the Ministry of Environmental Protection and Regional Development to the fact that it is not only their right but also their duty to prevent illegal action of the local government, especially recurrent one. In a democratic state governed by the rule of law, a situation where a local government does not comply with a court judgment for a prolonged period of time and repeatedly commits substantial violations of legal norms, thus endangering the legitimate interests and legitimacy of the society and undermining public confidence in the state and rights, is unacceptable. If the prevention of violations cannot be achieved by other means of *ex-post* control of the legality of local government activities, then

the Cabinet of Ministers shall consider the possibility to submit a draft law on dismissal of the local government council to the *Saeima* without an unreasonably long delay.

Substantive Part

On the basis of Articles 30–32 of the Constitutional Court Law, the Constitutional Court

held:

To declare clause 2 of Section 1 of the Riga City Council Dismissal Law to be compatible with Articles 1 and 101 of the *Satversme* of the Republic of Latvia.

The judgment is final and not subject to appeal.

The judgment enters into force on the day it is promulgated.

Chairperson of the Court hearing Sanita Osipova