THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga, on 29 October 2020

in Case No. 2019-29-01

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

with the participation of sworn advocate Lauris Liepa, the representative of the Applicant – thirty one Members of the 13th convocation of the *Saeima*: Evija Papule, Jānis Vucāns, Vjačeslavs Dombrovskis, Raimonds Bergmanis, Ļubova Švecova, Uldis Augulis, Aldis Gobzems, Gundars Daudze, Boriss Cilevičs, Viktors Valainis, Linda Liepiņa, Karina Sprūde, Didzis Šmita, Jūlija Stepaņenko, Ivans Ribakovs, Inga Goldberga, Regīna Ločmele-Luņova, Edgars Kucins, Nikolajs Kabanovs, Jānis Ādamsons, Vladimirs Nikonovs, Artūrs Rubiks, Ivars Zariņš, Ivans Klementjevs, Jānis Krišāns, Vitālijs Orlovs, Jānis Urbanovičs, Igors Pimenovs, Jānis Tutins, Sergejs Dolgopolovs, and Valērijs Agešins,

and Andrejs Stupins, the authorised representative of the institution, which issued the contested act, – the *Saeima*,

with Līva Ošeniece as the secretary of the court hearing,

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

on 22, 23 and 29 September 2020, examined at an open court hearing the case

"On compliance of the programmes 03.00.00 "Higher Education", 02.03.00 "Higher Medical Education", 20.00.00 "Cultural Education" and sub-programme 22.02.00 "Higher Education" of the Law "On the State Budget for 2019", insofar these do not envisage annual increase of the State-allocated financing for studies in State founded institutions of higher education in the amount no less than 0.25 per cent of the gross domestic product, as provided for in Section 78 (7) of the Law on Higher Education Institutions, with Article 1 and Article 66 of the *Satversme* of the Republic of Latvia".

The Facts

1. On 8 March 2019, the Cabinet submitted to the *Saeima* the draft law "On the State Budget for 2019". The programmes included in Annex 4 to the law envisaged granting financing from the State budget resources: programme 03.00.00 "Higher Education" – EUR 68 149 161, programme 02.03.00 "Higher Medical Education" – EUR 18 235 584, programme 20.00.00 "Cultural education" – EUR 52 661 419, but sub-programme 22.02.00 "Higher Education" – in the amount of EUR 9 818 610.

On 3 April 2019, the *Saeima* adopted the law "On the State Budget for 2019". The programmes included in Annex 4 to the law envisaged granting financing from the State budget resources: programme 03.00.00 "Higher Education" – EUR 68 149 161, programme 02.03.00 "Higher Medical Education" – EUR 18 235 584, programme 20.00.00 "Cultural education" – EUR 52 661 419, but sub-programme 22.02.00 "Higher Education" – in the amount of EUR 9 818 610 (hereafter jointly also – the contested regulation).

Pursuant to the data of the Central Statistical Bureau, in 2018, Latvia's gross domestic product in actual prices was approximately EUR 29.5 billion (*Available: https://www.csb.gov.lv/*). The increase in the State financing envisaged for State founded institutions of higher education in the law "On the State Budget for 2019" is EUR 2.1 million, approximately 0.007 per cent of the gross domestic product.

Section 78 (7) of the Law on Higher Education Institutions provides that the Cabinet, in submitting the annual draft law on the State budget to the *Saeima*, must provide therein an annual increase of financing for studies in State founded higher education institutions of not less than 0.25 per cent of the gross domestic product until the State-allocated financing for studies in State founded higher education institutions reaches at least two per cent of the gross domestic product.

2. The Applicant – thirty one members of the 13th convocation of the *Saeima* (hereafter – the Applicant) – holds that the contested regulation, insofar it is incompatible with the increase of the allocated State financing for studies in State founded institutions of higher education, defined in Section 78 (7) of the Law on Higher Education Institutions, is contrary to the general legal principles, enshrined in Article 1 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) – principles of the rule of law, legal certainty and good governance, as well as the sustainability principle, which follows from Article 66 of the *Satversme*.

It is contended that the contested regulation is incompatible with the rule-of-law principle, included in the *Satversme*, because the legislator should abide by the law it has adopted and follow it; however, already since 2014, the legislator has not complied with the provisions set out in Section 78 (7) of the Law on Higher Education Institutions and has not in included in the annual State budget increase in the financing for studies in State founded institutions of higher education. If it were impossible to fulfil the provisions set out in Section 78 (7) of the Law on Higher Education Institutions then the legislator had been obliged

to introduce such amendments to the respective legal norm that would ensure compliance with the rule-of-law principle.

The Applicant holds that the contested regulation had caused a substantial threat to the interests of the State and society. Higher education is said to be an indispensable precondition for successful development of a democratic state and society. Hence, democratic society and education are two inextricably linked concepts.

The deliberate and consistent non-increase of State funding for studies in State founded institutions of higher education in the amount specified by law has significant and lasting consequences also in the aspect of public welfare. In a democratic state governed by the rule of law, it is not permissible that the legislator ignores norms adopted by it for a long time, especially those, the fulfilment of which is closely connected to sustainable development of the welfare of society and the State.

The contested regulation, allegedly, is incompatible also with the principle of legal certainty. The legislator's actions, which are diametrically opposite, one the one hand, adopting Section 78 (7) of the Law on Higher Education Institutions and, on the other hand, consistent failure to fulfil the obligation defined therein, clearly show the legislator's uncertainty, as the result of which the trust in the State and the law by those individuals, to whom the contested regulation applies most directly, e.g., faculty members and students of State founded higher education institution, is not increasing. Moreover, the whole society is indirectly interested in having the State funding for studies in State founded institutions of higher education to be at a competitive level, but in the current legal situation the society cannot understand what rights operate in the particular field and what is the substantive regulation of this field. Allegedly, by its actions, the legislator undermines public confidence in the State and law.

It is contended that the contested regulation does not comply with the principle of good legislation either. Contrary to the obligation specified in the second part of Article 111of the Rules of Procedure of the *Saeima*, the legislator, adopting the law "On the State Budget for 2019" and being aware of the

contradiction between it and Section 78 (7) of the Law on Higher Education Institutions, has not proposed amendments to the said provision in the Law on Higher Education Institutions. The Applicant underscores that at the time when the law "On the State Budget for 2019" was adopted the legislator had not assessed whether this law, insofar it did not provide for the increase in the financing specified in Section 78 (7) of the Law on Higher Education Institutions, complies with legal norms of higher legal force. The legislator had not tried to align the contradictory regulations for a long time, had not considered the risk estimates expressed by stakeholders and experts of the field, and did not take timely risk-prevention measures in connection with prolonged failure to implement Section 78 (7) of the Law on Higher Education Institutions.

The contested regulation is said to be incompatible with the sustainability principle. It is the legislator's obligation to ensure that the legislative process is aimed at sustainable national development, *inter alia*, ensuring that sustainable legal regulation is drafted. Pursuant to the sustainability principle, the legislator should be able to find due balance between the aims it has set and the adopted legal norms, on the one hand, and the economic possibilities of the State, on the other hand. The Applicant holds that, until now, the legislator has been unable to achieve it. Thus, it can be concluded that the contested regulation does not comply with the duty of the legislator following from Article 66 of the *Satversme* to ensure drafting and adoption of the State budget in accordance with the sustainability principle.

At the court hearing, Lauris Liepa, the Applicant's authorised representative, underscored that Section 78 (7) of the Law on Higher Education Institutions was an imperative norm and, consequently, the legislator had to comply with it. He noted that the higher education sector was waiting for the legislator to finally start complying with this imperative norm.

3. The institution, which issued the contested act, i.e. the *Saeima*, requests termination of legal proceedings in the case on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law. Insofar deciding on issues

pertaining to the State budget does not violate the principle of separation of powers, denying a constitutional institution the possibility to perform its tasks or functions, defined in the *Satversme*, the *Saeima* and the Cabinet are said to enjoy the discretion to make forecasts and decisions in the area of drafting and adopting the State budget. It is alleged that the contested regulation does not deny any of the constitutional institutions the possibility to perform their tasks and functions, defined in the *Satversme* and, thus, does not violate the principle of separation of powers. The *Saeima* holds that the contested regulation does not restrict a person's fundamental rights either. Therefore, the Constitutional Court, allegedly, has no grounds for encroaching upon the choice made by a democratically elected parliament regarding the amount of State financing to be granted in 2019 to State founded institutions of higher education. This had been a political decision made by the *Saeima*, which cannot be reviewed in legal proceedings before the Constitutional Court.

However, the *Saeima* admits that the increase in the State funding, defined in Section 78 (7) of the Law on Higher Education Institutions, had been envisaged neither in the law "On the State Budget for 2019", nor in the previous annual State budget laws. This incompliance could be explained by the fact that the State budget possibilities had been too limited to fully satisfy the needs of all areas. The *Saeima* believes that the law "On Budget and Financial Management" and "Fiscal Discipline Law" are binding upon it, and these laws define the procedure for drafting and adopting the State budget and prohibit from approving expenses that are disproportional to the estimated State budget revenue.

Section 78 (7) of the Law on Higher Education Institutions, with respect to the task it sets for the Cabinet, should be examined in conjunction with other legal norms applicable to the elaboration of the annual draft State budget law. Pursuant to the law "On Budget and Financial Management", the Cabinet has the obligation to take into account the general economic balance in the State, finding a balanced approach and envisaging financing from the budget for all areas, not only that of higher education.

The *Saeima* emphasises that the State budget, generally, should be viewed as a policy planning document in the area of the State's finances. The State financing cannot be allocated solely on the basis of legal considerations. The fact that for several years increase in the State financing, in conformity with Section 78 (7) of the Law on Higher Education Institutions, had not been envisaged in the State budget law does not exclude the possibility that an appropriate increase in the financing will be ensured in the future. The fact that financing that would conform with Section 78 (7) of the Law on Higher Education Institutions had not been envisaged in the law "On the State Budget for 2019", allegedly, does not make the contested regulation incompatible with the *Satversme*. Section 78 (7) of the Law on Higher Education Institutions, in turn, had not been contested in the case.

4. The summoned person – **the Ministry of Finance** – underscores in its opinion that Article 66 of the *Satversme* authorises the *Saeima* to decide, annually, before the commencement of the financial year, on the State revenues and expenditures budget, the draft of which it submits to the Cabinet. The purpose of this regulation is said to be management of financial resources in compliance with the fundamental constitutional values. In deciding on the State's financial matters, only the *Saeima* has the right to the final say, *inter alia*, on how to balance revenue and expenditure for financing all functions of the State. The obligation of constitutional institutions – the Cabinet and the *Saeima* – to ensure that a sustainable State budget is elaborated and adopted is said to follow from Article 66 of the *Satversme*. I.e., in deciding on the State budget, balance between the State's economic possibilities and the welfare of society in general should be ensured in the long-term. Whereas prior earmarking of substantial financial resources for a specific purpose decreases the possibilities for flexible re-grouping of financial resources in accordance with priorities and urgent measures.

The Ministry of Finance underscores that it should be taken into account whether the accessible financial resources were sufficient for ensuring the

increase in financing, envisaged in Section 78 (7) of the Law on Higher Education Institutions. In elaborating the draft law "On the State Budget for 2019", the balance between the State's economic and financial possibilities and the need to ensure welfare for the society as a whole had been abided by.

Pursuant to "Fiscal Discipline Law", additional financing is granted in those cases where the fiscal space is available, which is defined by the difference between the maximum possible expenditure that can be made, without causing a deficit, and expenditure base, which is defined by political decisions that have been already made. Provisions on allocating a certain amount of financing for higher education would mean that the budget expenditure for another sector should be decreased. In such a case, transparency of fiscal policy would not be ensured, on which the stability principle, enshrined in the "Fiscal Discipline Law", is based on.

The Ministry of Finance underscores that the law, which primarily is enforced with respect to the use of the State budget resources, is the State budget Law adopted for the current year. If the State budget law provides for the appropriation of certain financial resources, then these resources, even if another law provides otherwise, may be spent only in the amount envisaged in the particular appropriation.

The fact that resources had not been provided in the amount envisaged in Section 78 (7) of the Law on Higher Education Institutions, allegedly, had not caused a substantive threat to public interests.

Representatives of the Ministry of Finance – Artis Lapiņš, Head of the Legal Department, Nils Sakss, Head of the Fiscal Policy Department, and Kārlis Ketners, Head of the Budget Policy Development Department of the Ministry of Finance – noted at the court hearing that the State budget resources allocated for education constituted a significant part of the total State budget expenditure. It also should be taken into account that as the number of students has decreased due to demographic processes and, consequently, the State budget financing per one student has increased. In general, the State budget financing allocated for higher education also has increased in recent years. Moreover, the State budget

financing is not the only source of financing for the sector of education. For example, it is possible to apply for the European Union's financing. In recent years, the general politics of the State had been aimed at increasing financing for education. The socio-economic reality and the financial possibilities for elaborating a balanced budget should be taken into account in drafting the annual budget.

Section 78 (7) of the Law on Higher Education Institutions cannot be deemed to be a norm of the budget law. The norms adopted by the *Saeima* and the Cabinet in the process of elaborating the annual State budget are said to be newer and special regulation *vis-à-vis* the requirements regarding the drafting of the budget included previously in other laws. The legislator's discretion in elaborating the budget is necessary to allow it to adapt to changing circumstances. Therefore the norms that pertain to the elaboration of the budget should not be included in sectoral laws at all.

5. Representatives of **the summoned person** – **the Ministry of Education and Science** – Daiga Dambīte, Deputy Direction of the Legal and Real Estate Department of the Ministry of Education and Science, and Dace Jansone, Deputy Director in charge of higher education of the Department of Higher Education, Science and Innovations of the Ministry of Education and Science, noted at the court hearing that the State budget financing for studies at State founded institutions of higher education had been set, by ensuring economic balance in the State and abiding by the principle of a balanced budget, and, thus, Article 1 and Article 66 of the *Satversme* had not been violated.

The aims and priorities for the development of higher education, science and innovation are defined by several policy planning documents of the European Union and national level, which the Ministry had taken into account. An assessment of the sectoral financing had been conducted in 2014 in cooperation with the World Bank, and a new model for financing higher education, appropriate for Latvia's situation, had been developed, and, currently, it is being implemented. Within the model, the financing base ensures sustainability of the system, and

performance financing facilitates attainment of results, whereas development financing promotes links with long-term needs of economic development.

On 29 June 2015, the Cabinet issued order No. 333 “On Implementing a New Model for Financing Higher Education in Latvia”, which supports the change of the model for financing higher education, gradual implementation of the scenario for developing knowledge society and an action plan for transiting to the new procedure of financing. The Cabinet had supported the World Bank’s proposal, referred to above, to introduce the three-pillar model for financing higher education and research in higher education institutions. The change of the system for financing higher education is said to include targeted increase of the State financing for higher education and science, closer integration of financing for studies and research, introducing into the mechanism of financing performance and competition-driven components, an effective system for monitoring performance indicators and support for reaching the strategic development aims of higher education institutions.

The budget for higher education is elaborated in compliance with, first of all, the law “On Budget and Financial Management”, which defines the procedure for elaborating, approving and implementing the State budget, and, secondly, “Fiscal Discipline Law”, as well as the Cabinet Regulations, issued on the basis of these two laws.

In view of the fact that the model for financing higher education is changing, the decisions that have been adopted and the possibilities of the State budget, the Ministry holds that, although currently the allocated State financing is not compatible with the amount defined in Section 78 (7) of the Law on Higher Education Institutions, nevertheless, by implementing reforms in higher education, the total State financing for studies in State founded higher education institutions has ensured that the aims that had been set have been attained.

The Ministry cannot agree to the Applicant's argument that the contested regulation, *inter alia*, applies to individuals and as a result of it they are unable to make short-term decisions and long-term plans for the future. The financing defined in the particular programs and sub-programs of the State budget is

allocated for a specific aim in the respective sector and not to persons or groups of persons, *inter alia*, faculty members and students. Since, in elaborating the State budget for higher education, the financing is planned, for example, also for the development of infrastructure, so the students and the faculty members cannot have a subjective right to a specific amount of financing. Thus, the Ministry is of the opinion that the principle of legitimate expectations has not been violated since the fundamental rights of an individual have not been infringed upon and have not been restricted.

The Ministry holds that the principle of good legislation has been complied with because the contested regulation has been adopted in the procedure set out in the Rules of Procedure of the *Saeima* and the State budget, in general, is balanced.

The contested regulation is said to comply with the principle of sustainability. In planning the State financing for studies in State funded institutions of higher education, planned and results-oriented development is ensured, which complies with the politics implemented by the State in the area of higher education, and the use of the State financial resources has been aligned with the amount of financial resources at the disposal of the State.

At the court hearing, the Ministry maintained its opinion expressed in writing and underscored that in preparing the annual draft State budget law, *inter alia*, the Cabinet regulation of 11 December 2012 No. 867 "Procedure for Defining the Maximum Admissible Total Amount of State Budget Expenditure and the Maximum Admissible Total Amount of State Budget Expenditure for Each Ministry and Other Central State Institutions in Medium-Term", issued on the basis of the law "On Budget and Financial Management" had to be taken into account. In the process of preparing the draft State budget, all sectoral Ministries cooperate with the Ministry of Finance, which in accordance with the requirements included in this Regulation, every year calculates the maximum admissible amount of expenditure for Ministries within the term set in the schedule for preparing the budget. Hence, the amount of budget calculated by the Ministry of Finance is binding for the Ministry of Education and Science and

it has no possibility to request a larger budget.

It was also underscored at the court hearing that the Ministry of Education and Science participated actively in the process of elaborating the annual State budget and it also has heard the opinion of the sector and has attempted to align it with the possibilities of the State budget.

6. The summoned persons – the authorised representatives of the Ministry of Justice Laila Medina, Deputy State Secretary of the Ministry of Justice in charge of law policy issues, and Iveta Brīnuma, Head of the Constitutional Law Unit of the State Law Department– pointed out at the court hearing that by the disregarding for a long time the provisions of Section 78 (7) of the Law on Higher Education Institutions with regard to increasing of financing for studies in State founded institutions of higher education, the principle of the rule of law, which follows from Article 1 of the *Satversme*, was not complied with, and the contested regulation was incompatible with the sustainability principle, included in Article 66 of the *Satversme*.

Education is said to be the foundation of national welfare and development. The Ministry of Justice holds that the regulation included in Section 78 (7) of the Law on Higher Education Institutions with respect to the annual increase in financing for studies in State founded institutions of higher education, envisaged in it, is aimed at sustainable development of the State and promotes the competitiveness of the higher education sector.

The second part of Article 66 of the *Satversme* is said to restrict the possibilities of the *Saeima* to define new State budget expenditure without, at the same time, envisaging resources for covering this expenditure. Likewise, the second part of Article 66 of the *Satversme* is not applicable in those cases when the legislator wants to decide on allocating new expenditure from the State budget by a separate law. I.e., also in these cases, the legislator has to envisage concrete resources for covering this expenditure and the respective law must be

aligned with the annual State budget law and the framework law for medium-term budget.

The Ministry of Justice underscores that the adoption of the annual State budget law is an important function of the *Saeima*, which it performs as an institution which is directly responsible before the people of Latvia. Compared to other constitutional institutions involved in the drafting and adoption of the State budget, the *Saeima* plays the most important constitutional legal role in performing this constitutional task. The Ministry of Justice holds that the contested regulation is incompatible with the sustainability principle included in Article 66 of the *Satversme* because it is the obligation of constitutional institutions to ensure that a sustainable State budget is drafted and adopted. Thus, it is the legislator's task to prevent, insofar possible, the simultaneous existence of such legal norms, the mutual compliance and alignment of which could cause reasonable doubts. In the particular situation, the legislator had had the obligation to amend Section 78 (7) of the Law on Higher Education Institutions, however, this had not been done. This fact alone does not release the Cabinet from the obligation to prevent the contradictions that had existed for a long time between the Law on Higher Education Institutions and the annual draft State budget law. Such actions by the State constitutional institutions, which for many years are incompatible with law, cannot be recognized as being acceptable.

The Ministry of Justice is of the opinion that adoption of such laws, which envisage providing within the State budget particular financing for a specific sector, should be carefully considered because often such laws are not implemented, and smaller financing is actually provided for in the annual State budget. If the Cabinet and the *Saeima*, within their discretion, would decide on the amount of resources necessary for the sector when drafting the framework law on medium-term budget and balancing the estimated budget revenue with expenditure, it would be a more expedient solution. Since the State budget is the main means for implementing the policy of the State with financial methods it is important for the Cabinet and the *Saeima* to be able to make long-term plans for the national development and draft the budget in a way that would allow reaching

feasible long-term and medium-term national development aims.

At the court hearing, the Ministry's representatives noted additionally that it was essential to balance the budget for all sectors and this was one of the most important functions of the legislator. The legislator's choice in adopting the budget is determined by political considerations and considerations of expedience. However, the process of adopting the budget should be legally correct. The principle of good legislation should be abided by in the process of legislation, legal stability and society's trust in the State and law should be facilitated. The existence of an actually unenforceable norm within the legal system could not be justified.

Section 78 (7) of the Law on Higher Education Institutions is an imperative norm, it is in force, the legislator has neither revoked nor specified it, and therefore, in drafting the annual, i.e., the State budget for 2019, it had to be complied with. The representatives of the Ministry of Justice noted that, obviously, this norm could not be implemented in practice and the legislator, in general, should not adopt such clear and concrete norms which later on prohibit from drafting the State budget flexibly.

7. The summoned person – **the Bank of Latvia** – holds that the contested regulation complies with Article 1 and Article 66 of the *Satversme*.

The principle of legal certainty should be examined broader than just within the framework of one legal norm, one regulatory enactment or regulation on the development of one sector. The Bank of Latvia holds that the adoption of actually enforceable budget law would be more compatible with the practice of good legislation rather than aligning the budget with unenforceable laws. An unenforceable law cannot create the foundation for good legislative practice because it, as to its nature, is not such. Therefore, due to its declarative nature this law cannot create legal certainty.

Whereas the principle of sustainability, included in Article 66 of the *Satversme*, the Bank of Latvia closely links with the State's commitment, expressed in the sixth paragraph of the Preamble to the *Satversme*, to facilitate

sustainable development. Ensuring qualitative education is one of the aims on which ensuring national sustainability is based on. However, there are also other aims alongside this one, such as elimination of poverty, promoting economic development, restricting negative climate change, and others. All these aims need to be connected in a balanced way. The legislator, by accepting the fiscal policy, by financial methods, regulates the distribution of balance between them that is more compatible with the particular circumstances. The Bank of Latvia holds that in the circumstances of the present case the contested regulation complies also with the sustainability principle included in Article 66 of the *Satversme*.

Various models for financing higher education are said to function equally successfully in the global practice and choosing one of them is a matter of the general national policy. However, it should be taken into account that any of these can function successfully only by being linked to socio-economic characteristics of the state and its tradition. Therefore, attempts art changing any element of the education system, including changes to financing, may not automatically bring the intended increase in welfare. Moreover, currently, insufficiently effective use of the allocated financing can be observed in the Latvian system of higher education. By eliminating these deficiencies greater effect could be achieved with respect to the development of future welfare in the case of choosing any amount of financing for higher education.

8. The summoned person – **the Fiscal Discipline Council** – noted at the court hearing that the State budget financing, envisaged in several laws, for example, the Law on Scientific Activity, the law "On Motor Roads", "Health Care Financing Law", *inter alia*, also in the Law on Higher Education Institutions, which had been defined by linking it with an economic or numerical indicator (percentage from the gross domestic product, percentage from the budget revenue, a subsidy increasing in certain stages), was usually not allocated to the sectors because it significantly exceeded the possibilities of the annual State budget. The estimates made by the Fiscal Discipline Council show that the amount of expenditure, earmarked like this, in 2020 should exceed already EUR 700 million.

Such legislative practice is said to ignore the pre-conditions of cyclical development of the economy and the total potential of national economy. The admissible State budget expenditure is defined both by national and European Union legal norms, which do not allow excessive State budget deficit and increase in the level of debt. Hence, such "earmarking" of the State budget resources limits the possibilities of drafting a balanced State budget.

At the court hearing, Chairperson of the Fiscal Discipline Council Inna Šteinbuka noted that increasing the State budget expenditure in the amount defined in the particular norm of the Law on Higher Education Institutions would be impossible without a significant decrease in the expenditure in other State budget programs and this could cause adverse consequences for the economy. Balancing the expenditure and revenue of the State budget was said to be particularly important. Moreover, if the particular regulation of the European Union is violated the procedure of excessive budget deficit could be initiated against Latvia and penal sanctions could be imposed. She recommended performing a stocktaking of the legal norms and abandoning such legislative practice where the State budget financing for some sectors is defined outside the process of budgeting or the particular financing is linked to some kind of economic or numerical indicator. That would help to improve substantially the practice of managing the State finances.

9. The summoned person – **the Rectors' Council** – holds that it is the legislator's obligation to enforce a law that it has adopted itself, i.e., Section 78 (7) of the Law on Higher Education Institutions, and to allocate budget financing for the sector of higher education in the amount defined in this norm.

Compared to other European states, the State budget financing for institutions of higher education in Latvia has been insufficient already for a long time. However, the requirements that have been set with respect to accreditation of higher education institutions and the indicators to be reached are said to be exceedingly high. Therefore, higher education institutions are forced to find other sources of financing in order to reach the defined development indicator, for

example, to establish a tuition fee or use co-funding of the European Union to implement various projects. The sector of higher education is said to be one of the priority sectors for the State, and sustainable national development to large extent depends on the development of it.

At the court hearing, authorised representatives of the Rectors' Council Rūta Muktupāvela, Ingars Eriņš and Jānis Bernāts underscored that since the adoption of Section 78 (7) of the Law on Higher Education Institutions, it had foregrounded the issue of complying with this norm in the process of drafting the annual State budget; however, neither the Cabinet nor the legislator had found the possibility to reflect the priority of the higher education sector in the State budget.

The Rectors' Council holds that Section 78 (7) of the Law on Higher Education Institutions is a valid norm and expects that it will be complied with in the future, at least partially approximating the allocated State budget financing with the amount defined in this norm.

10. The summoned person – **the Council of Higher Education** – holds that the Cabinet and the *Saeima* have the obligation to abide by Section 78 (7) of the Law on Higher Education Institutions and allocated to the sector of higher education State budget financing in the amount defined in this norm. In the process of drafting the annual State budget, the legislator had been constantly requested to abide by this norm. Namely, each year the line ministry had been asked to define the increase of the financing in accordance with the regulation of Section 78 (7) of the Law on Higher Education Institutions as one of the priority measures. The government and the legislator had never denied the priority of the sector of higher education, however, the aim of increasing the financing included in Section 78 (7) of the Law on Higher Education Institutions had not been implemented.

At the court hearing, representative of the Council of Higher Education Andris Teikmanis emphasised that Section 78 (7) of the Law on Higher Education Institutions was a valid norm and a significant promise, the fulfilment of which was still expected by the sector. It is said to be inadmissible that in a democratic state governed by the rule of law some valid regulatory enactments are ignored

for a long period of time.

11. The summoned person – Mārtiņš Bondars, Chairperson of the Budget and Finance (Tax) Committee of the 13th convocation of the *Saeima*, – at the court hearing expressed the opinion that Section 78 (7) of the Law on Higher Education Institutions was a typical "pre-election norm" namely it comprised a future promise to society. The contested regulation, in turn, is said to be "governance norms", which reflect the real possibilities of allocating State budget financing. This situation, in his opinion, is normal and society should understand it. Mārtiņš Bondars underscores that the draft State budget initially is elaborated by the Cabinet. It is the *Saeima's* obligation, in turn, to control whether a State budget that complies with the actual financial possibilities is drafted, and in general, in the circumstances of the present case, this obligation had been fulfilled.

Nevertheless, Mārtiņš Bondars admits that Section 78 (7) of the Law on Higher Education Institutions is a valid norm, which points to the legislators promise to strive for the aim defined in the norm. He does not see any problem in the fact that, in drafting the annual State budget, this norm had never been complied with and the legislator had never considered the matter of amending this norm or deleting it from the Law on Higher Education Institutions. Mārtiņš Bondars believes that neither society nor the faculty members and students of higher education institutions could, on the basis of Section 78 (7) of the Law on Higher Education Institutions, count on the allocation of a certain amount of State budget. This norm is said to be a promise to the sector of higher education in general.

12. The summoned person –Arvils Ašeradens, Chairperson of the Education, Culture and Science Committee of the 13th convocation of the *Saeima*, – at the court hearing expressed the opinion that increasing the financing for higher education *per se* was not the main problem. The quality of higher education in Latvia was said to still be lower than in other European states. Higher education institutions of Latvia do not ensure that labour force needed in the

relevant labour market is prepared. The structure of the higher education sector should be made more effective through restructuring. Arvils Ašeradens pointed to several intended improvements to the legal regulation with respect to the Law on Higher Education Institutions and the Law on Scientific Activities it is planned to introduce these improvements in the near future.

Arvils Ašeradens recognized that a certain conflict between Section 78 (7) of the Law on Higher Education Institutions and the contested regulation could be identified. However, in his opinion, there is a certain explanation for this situation. I.e., when the composition of the *Saeima* changed, also the State's policy and the opinion of the developers of it on priorities change. Arvils Ašeradens pointed out that the priorities in the higher education field had changed and now the alignment of the sector was the main priority for the legislator. Section 78 (7) of the Law on Higher Education Institutions, in his opinion, should be revoked because it restricts politicians' discretion in deciding on allocations of the State budget in a democratic political process.

13. The summoned person – ***Mg. oec.*** **un** ***Mg. iur.*** **Līga Leitāne, lecturer and researcher of the Faculty of Business Management and Economics of the University of Latvia,** – holds: the fact that the government and the legislator have not implemented and have ignored for a long period of time Section 78 (7) of the Law on Higher Education Institutions is incompatible with the principle of the rule of law, enshrined in Article 1 of the *Satversme*, the principle of legal certainty and the principle of good legislation, as well as the principle of sustainability following from Article 66 of the *Satversme*.

In reviewing the case, *inter alia*, the opinion by the experts of the International Bank for Reconstruction and Development is important, it is noted within it that the State of Latvia has been providing insufficient financing for the system of higher education over a long period. Insufficient financing is said to subject to risk the quality of education and research, to restrict the effectiveness of the higher education sector, to prohibit from establishing a stable base of resources, and it also has a pronouncedly negative effect on the accessibility of

higher education because study places in State founded institutions of higher education financed by the State budget are insured only to approximately half of the students. The lack of stable financing, in particular, for research hinders the reaching of aims set for the development of technologies, innovations and entrepreneurship and leads to excessive reliance on other sources of income, for example, tuition fees and the European Union funds.

Education, in particular, higher education is one of the most essential preconditions for consolidating free democratic society. As a result of insufficient financing for higher education institutions, society loses the possibility of receiving science-based inventions research, of increasing its welfare and the competitiveness of the State. The failure to implement Section 78 (7) of the Law on Higher Education Institutions for a long period of time has a negative impact on society's trust in the State.

At the court hearing, Līga Leitāne additionally noted that Section 78 (7) of the Law on Higher Education Institutions was a clear indication that the financing would be increased. The legislature has not revoked its commitment, and the State's decisions on its priority measures are not revoked only by allocating insufficient financing.

14. The summoned person – ***Mg. iur.*** **Edgars Pastars** – holds that the contested regulation is incompatible with Article 1 and Article 66 of the *Satversme*.

Section 78 (7) of the Law on Higher Education Institutions and similar legal norms are said to restrict the government's exclusive right to prepare the draft State budget as the main policy instrument of the government. The *Saeima* could amend legal norms of such nature in accordance with the State budget that is adopted; however, in practice it is not being done due to political reasons. The annual amendment of these legal norms would mean recognizing that, essentially, they are meaningless, but the failure to amend these norms cause concern regarding compliance with the principle of the rule of law. It would be more correct to include the aims for which these norms have been created in policy

planning documents. Whereas the State budget is a tool for implementing the respective plans, within the existing possibilities. Edgars Pastars underscores that legal norms must be implemented as they are, or they must be amended in compliance with the principle of legitimate expectations. Section 78 (7) of the Law on Higher Education Institutions and other similar legal norms cannot be considered as being only guidelines that are taken or are not taken into account when drafting the annual State budget law. The legislator may not allow the existence of contradictory legal norms, in particular, norms that apply to the allocation of the State budget resources. This not only undermines trust in the entire legal system but also is incompatible with the procedure for elaborating and approving the State budget, which is set out in the Rules of Procedure of the *Saeima*.

The amount of money earmarked by the law in the present case is not the amount of money that the sector actually needs but should be regarded as a quota. Such earmarked amounts mean that the government cannot freely weigh the priorities of all sectors because it has to exclude from the resources to be allocated the quotas already set by the *Saeima*. Actually, the *Saeima* has already "pre-decided" this matter instead of the government, to a certain extent encroaching upon the government's exclusive competence to propose the State budget. Consequently, Section 78 (7) of the Law on Higher Education Institutions and legal norms similar to it are contrary to the procedure for adopting the State budget, set out in Article 66 of the *Satversme*.

It is not called into question that the Constitutional Court cannot verify whether the financing envisaged in a State budget program is appropriate, except for cases when the amount of the defined financing infringes upon one of the legal principles or values protected by the norms of the *Satversme*, specified laws or lawful interests. In the present case, a violation of the principle of good legislation and the violation of the principle of legitimate expectations could be identified.

Edgars Pastars noted additionally at the court hearing that the current situation revealed that there could be cases when the sectors understand that they would be unable to gain support for ensuring the financing if this would be

assessed by the Ministry of Finance. Therefore, the allocation of financing is defined in sectoral laws. The contested regulation cannot cause a violation of the legitimate expectations of particular persons but only reveals that the process of legislation itself is incompatible with this principle. Section 78 (7) of the Law on Higher Education Institutions is invalid because it is contrary to Article 66 of the *Satversme*. The fact that the legislator ignores the existence of this norm is said to prove that this norms is not and will not be enforced.

If the *Saeima* wishes to provide additional financing for a sector it would also have the obligation to define the source of financing needed for the implementation of this requirement. A reasonable practice would be that the legislator does not follow the general norms on allocating financing (quotas) included in the sectoral laws. In drafting the annual State budget, the Cabinet and the *Saeima* should take the actual financial possibilities as the basis.

The contested regulation cannot be recognized as being incompatible with the *Satversme* since the norm that is contrary to this regulation is incompatible with the *Satversme*.

The legislator should revoke one of these contradictory norms.

The Findings

15. The term of validity for the annual State budget law is limited – within the framework of the respective fiscal year. The law "On the State Budget for 2019" and the allocation of the State budget financing, defined in Annex 4 to it, *inter alia,* the regulation contested in the present case, has lost its legal force on 1 January 2020 because it had been implemented. Onwards, the law "On the State Budget for 2019" serves as the legal basis and the necessary point of references for *ex-post* control of the allocations and expenditure set out in it.

Para 2 of Section 29 (1) of the Constitutional Court Law provides that legal proceedings may be terminated before the judgment is delivered by the Constitutional Court's decision if the contested legal norm or act has become void. In case the contested norm or act has become void, the law provides for the

possibility for the Constitutional Court to terminate legal proceedings but not an obligation to do so. In this case, the Constitutional Court must determine whether circumstances exist which require continuation of legal proceedings (*see, for example, Decision of 3 April 2014 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2013-11-01, Para 10*).

In the present case, the application was submitted by Members of the *Saeima* within the framework of the abstract review of legal norms. The Applicant notes that the Cabinet already since 2014, in drafting the annual State budget law, has not fulfilled the task set out in Section 78 (7) of the Law on Higher Education Institutions and the *Saeima*, in approving the annual State budget, has not complied with the law that it had issued itself. The *Saeima*, however, notes that not complying with the increase of the State budget financing defined Section 78 (7) of the Law on Higher Education Institutions does not make the respective allocation of the State budget incompatible with the *Satversme*. At the court hearing, the representatives of both the Ministry of Finance and the Ministry of Education and Science noted that also in elaborating the draft law "On the State Budget for 2021" Section 78 (7) of the Law on Higher Education Institutions would not be fully complied with because economic possibilities of the State do not allow implementing it. (*see Transcript of the Constitutional Court's Hearing of 22 September 2020, Case Materials, Vol. 6, pp. 62-63 and pp. 95.-97*).

The Constitutional Court holds that, in the presence of such circumstances, a reasonable interest to find a solution to the matter of dispute can be identified, irrespectively of the fact whether the contested regulation continues to be in force or is void. The Constitutional Court has recognized that it is not restricted in reviewing the annual State budget law even if the fiscal year has already ended. The Constitutional Court has emphasized that the elaboration, drafting and adoption of the State budget is a matter of constitutional importance (*see Judgement of 3 February 20212 by the Constitutional Court in Case No. 2011-11-01, Para 9*). The Constitutional Court's ruling in the present case

will also have far-reaching significance in the process of preparing and adopting the next annual State budget laws.

Hence, the Constitutional Court has no grounds for terminating legal proceedings although the contested regulation has become void.

16. The *Saeima* has requested terminating legal proceedings in the case on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law because, allegedly, the Constitutional Court cannot assess the State financing allocated to a certain sector, where the allocation is the legislator's political decision.

Para 6 of Section 29 (1) of the Constitutional Court Law Provides that legal proceedings in the case may be terminated before a judgment is delivered by the Constitutional Court's decision in other cases if it is impossible to continue legal proceedings in the case. The concept "other cases", included in Para 6 of Section 29 (1) of the Constitutional Court Law, is to be understood as cases not referred to in Para 1-5 of the first part of this Section.

The Constitutional Court has recognized that the State budget is both the national economic plan and also an instrument for implementing the national policy (*see Judgement of 27 November 1998 by the Constitutional Court in Case No. 01-05(98), Para 1, and Judgement of 18 January 2010 in Case No. 2009-11-01, Para 8.1.*). Therefore, the State budget law reflects the political decisions of the State. The amounts of money defined in the State budget restrict or allow implementing these decisions. The State budget law impacts not only the political development of the State but also its economic and social development. The State budget law characterizes the political, economic and social profile of all the *Saeima* and the Cabinet of the time. Hence, the State budget law has several functions: political, fiscal-political, economic-political and, finally, it has the function of control.

The Constitutional Court has noted that it does not examine the policies developed by the State budget financing programs (*compare, see Judgement of 3 February 2012 by the Constitutional Court in Case No. 2011-01-01, Para 11.2.*). Although the State budget law is a pronouncedly "political"

decision; however, in a democratic state governed by the rule of law, in drafting, adopting, implementing the State budget law and then in controlling its implementation, law must be complied with. Pursuant to Article 85 of the *Satversme,* the Constitutional Court's task is to review cases regarding the compliance of laws with the *Satversme.* Since the *Saeima* exercises its right to budget, established in Article 66 of the *Satversme*, in the form of a law, the Constitutional Court has full competence to verify whether the *Satversme* was complied with in preparing and adopting the law "On the State budget for 2019". In the present case, the Constitutional Court is not asked to and it will not examine whether the policy, developed by the contested regulation, is correct.

Hence, the *Saeima's* request to terminate legal proceedings is to be dismissed.

17. The Applicant notes that, in the course of adopting the law "On the State Budget for 2019", Section 78 (7) of the Law on Higher Education Institutions had to be complied with but the Cabinet did not comply with it, thus, violating the principles of the rule of law, legal certainty and good legislation, as well as the principle of sustainability. However, at the court hearing, the Applicant's representative noted that the compatibility of Section 78 (7) of the Law on Higher Education Institutions with the *Satversme* should not be examined in the framework of this case. The *Saeima* has expressed the opinion that the Applicant has not contested the compliance of Section 78 (7) of the Law on Higher Education Institutions with the *Satversme* and therefore it should not be reviewed in this case.

The Constitutional Court has recognized that the compliance of a subprogram of the State budget with norms of the *Satversme* can be examined only in conjunction with a particular legal norm, which imposes an obligation upon the State and, at the same time, grants to a person the right to demand the performance of this obligation. This is the only way in which the Constitutional Court can establish whether the legislator and other institutions of State power have acted in compliance with norms of the *Satversme* (*see Decision of*

17 February 2010 by the Constitutional Court on Terminating Legal Proceedings in Case No. 2009-42-0103, Para 11). Such norms, in a broader meaning, pertain to deciding on the annual State budget law defined in Article 66 of the *Satversme*.

The Applicant has not contested the compliance of Section 78 (7) of the Law on Higher Education Institutions with the *Satversme*.

The Constitutional Court has recognized that it may expand the limits of the claim and examine also the compatibility of norms that had not been contested in the application if these norms are so closely linked to the norms contested in the case that it is possible to examine it within the framework of the same reasoning and it is necessary for deciding in the particular case and for complying with the principles of legal proceedings before the Constitutional Court (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 17*).

In the present case, the contested regulation and Section 78 (7) of the Law on Higher Education Institutions regulate closely interconnected matters of the State budget. The contested regulation defines the allocation of the State budget resource for State founded institutions of higher education but Section 78 (7) of the Law on Higher Education Institutions requires the Cabinet to allocate every year to State financed institutions of higher education a certain part of the State budget financing with concrete increase until the State allocated financing for studies in State funded institutions of higher education would reach at least 2% of the gross domestic product. Hence, Section 78 (7) of the Law on Higher Education Institutions interfere into the process of elaborating the annual draft State budget law and its validity directly impacts also the contested regulation. It is impossible to examine the Applicant's arguments regarding violations in the procedure, in which the contested regulation was adopted, without examining also that requirement and validity of Section 78 (7) of the Law on Higher Education Institutions.

To expand the limits of hearing the case, it would be procedurally fair to hear the opinions of the participants in the case regarding the legal norm the

constitutionality of which will be examined by the Court in expanding the limits of the claim. In the present case, both the participants in the case and the summoned persons expressed their considerations regarding the compatibility of the contested regulation with the *Satversme* in conjunction with Section 78 (7) of the Law on Higher Education Institutions and expressed their opinion about the content and validity of this norm. Therefore, examination of Section 78 (7) of the Law on Higher Education Institutions is possible in the framework of the present case.

Consequently, the Constitutional Court will examine the compliance of Section 78 (7) of the Law on Higher Education Institutions with Article 66 of the *Satversme*.

18. The Applicant has pointed to possible incompatibility of the legislator's action with several general principles of law. The opinion expressed in the application is that in the adoption of the law "On the State Budget", Section 78 (7) of the Law on Higher Education Institutions had to be complied with, however, the Cabinet did not do it, thus violating the principles of the rule of law, legal certainty and good legislation, included in Article 1 of the *Satversme,* as well as the sustainability principle, included in Article 66 of the *Satversme*.

In a democratic state governed by the rule of law, the constitutional requirements are binding upon the legislator and the executive power (*see, for example, Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 17*). The legal norms included in the *Satversme* are closely interconnected (*see, for example, Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 13*). The principle of the unity of the *Satversme* prohibits from interpreting particular constitutional norms separately from other norms because the *Satversme* as a unified document impacts the scope and the content of each particular norm (*see Judgement of 16 October 2006 by the Constitutional Court in Case No. 2006-05-01, Para 16*). The Constitutional Court already previously has linked the general principles of

law, reflected in Article 1 of the *Satversme* with the procedure of adopting the State budget, which is regulated in Article 66 of the *Satversme* (*see, for example, Judgement of 3 February 2012 by the Constitutional Court in Case No. 2011-11-01, Para 11.2.*).

Hence, the Constitutional Court will examine the compliance of Section 78 (7) of the Law on Higher Education Institutions with Article 66 of the *Satversme* in conjunction with Article 1 of the *Satversme*.

19. Pursuant to Section 77 (1) of the Law on Higher Education Institutions, the financial resources of State higher education institutions are formed from the resources of the State general budget, as well as other income which higher education institutions earn by performing activities for the realisation of the aims specified in the constitutions thereof. The resources from the State general budget are allocated to higher education institutions within the annual State budget law.

The contested regulation determines the financing allocated by the State for studies in State founded higher education institutions in 2019.

Pursuant to Section 18 of the law "On Budget and Financial Management", the elaboration of the budget in the Cabinet proceeds in a certain procedure: the Ministries and other central State institutions, in accordance with the schedule for preparing the draft budget, develop and submit to the Ministry of Finance the State budgetary requests, prepared in conformity with the basic principles for the development of the budgetary requests, *inter alia*, within the scope of the maximum permissible amount of the State budget expenditure specified in the medium-term budget framework law for the relevant year. Pursuant to information, provided by the Ministry of Education and Science and the Ministry of Finance at the court hearing, a State budgetary request, which complied with the rules specified in the law "On Budget and Financial Management", had been submitted to the Ministry of Finance (*see Transcript of the Constitutional Court's Hearing on 22 September 2020, Case Materials, Vol. 6, pp. 61-65 and p. 99*).

The draft law "On the State Budget for 2019" was examined at the Cabinet's sitting of 6 March 2019 (*see Minutes of the Cabinet's Sitting of 6 March 2019, No. 12*) and submitted to the *Saeima* already on 8 March 2019.

Pursuant to Section 22 of the law "On Budget and Financial Management", the *Saeima* examines and approves of the annual package of draft State budget laws, submitted by the Cabinet, in legislative procedure.

Section 87^1 of the Rules of Procedure of the *Saeima* provides that the package of draft State budget laws is comprised of the annual State budget draft law and draft laws linked to the budget. The Constitutional Court has recognized that it is the legislator's obligation to verify whether all matters included in the State budget law and the accompanying package of laws pertain to the particular fiscal year and are closely linked to the use of the State financial resources. The *Saeima* must examine, whether the draft laws of the State budget law package, submitted by the Cabinet, meet the criteria indicated in Section 87^1 of the Rules of Procedure of the *Saeima* (*see, for example, Judgement of 25 March 2015 by the Constitutional Court in Case No. 2014-11-0103, Para 18.1*.).

In the present case, the participants of the case and the summoned persons agree that the increase of financing for State founded institutions of higher education, set out in Section 78 (7) of the Law on Higher Education Institutions, had not been envisaged in the contested draft regulation. Moreover, the *Saeima* verified that the Cabinet had not included amendments to Section 78 (7) of the Law on Higher Education Institutions in the package of draft laws accompanying the annual draft State budget law, and by its decision dismissed a proposal to envisage in the annual State budget law such financing that would comply with the requirements set in Section 78 (7) of the Law on Higher Education Institutions (*see Transcript of Extraordinary Sitting of the 13th Convocation of the Saeima on 3 April 2019. Latvijas Vēstnesis, 2019. gada 11. aprīlis, Nr. 73*). The participants in the case and the summoned persons recognise that also in the draft laws "On the State Budget for 2014", On the State Budget for 2015", On the State Budget for 2016", "On the State Budget for 2017" and On the State Budget for 2018" the Cabinet had envisaged to the State founded higher

education institution financing that was incompatible with Section 78 (7) of the Law on Higher Education Institution, the *Saeima*, however, adopted the annual draft State budget laws, as well as the accompanying draft laws without amending Section 78 (7) of the Law on Higher Education Institutions (*see Transcript of the Constitutional Court's hearing on 22 September 2020, Case Materials, Vol. 6, pp. 8,43, 45,116 and 144*).

Thus, the Cabinet has prepared and the *Saeima* has adopted the contested regulation, in which the requirement set in Section 78 (7) of the Law on Higher Education Institutions regarding the increase in a certain amount of the State budget financing was not complied with.

20. Pursuant to the principle of a state governed by the rule of law, the laws which the *Saeima* has adopted are binding upon itself. Therefore, if the *Saeima* has envisaged certain expenditure by law then it has to comply with it also in the procedure of discussing and adopting the State budget. The *Saeima* itself has specified this requirement in its internal order providing in Section 111 (2) of the Rules of Procedure of the *Saeima*: "If, upon passing a draft law, contradictions arise between this law and the laws already in force, the Saeima shall rule that the new law or its separate parts take effect simultaneously with the amendments to the laws already in force." This norm reflects the principle of a rational legislator, which imposes an obligation upon the *Saeima* to not adopt contradictory laws. This means that the *Saeima*, in adopting the contested regulation, had to consider, *inter alia*, its compatibility with Section 78 (7) of the Law on Higher Education Institutions.

Section 78 (7) of the Law on Higher Education Institutions defines a specific part of the State budget resources, which by the State budget law is to be allocated annually to a specific sector and needs, i.e., to State founded higher education institutions and studies therein. The *Saeima* and several of the summoned persons have noted that disregarding Section 78 (7) of the Law on Higher Education Institutions had been possible because the requirements defined in this norm were contrary to the financial possibilities of the State and

the need for a balanced State budget (*see, for example, Transcript of the Constitutional Court's hearing on 22 September 2020, Case Materials, Vol. 6, p. 40, and Vol. 7, pp. 47 and 56)*. Some of the summoned persons noted Section 78 (7) of the Law on Higher Education Institutions restricted the Cabinet's competence in elaborating the State budget (*see Transcript of the Constitutional Court's hearing on 22 September 2020, Case Materials, Vol. 6, p. 75, and Vol. 7, p. 15)*.).

Therefore, the Constitutional Court must verify whether Section 78 (7) of the Law on Higher Education Institutions complies with Article 1 and Article 66 of the *Satversme*.

21. Article 66 of the *Satversme* provides that, annually, before the commencement of each financial year, the *Saeima* decides on the State Revenues and Expenditure Budget, the draft of which is submitted to it by the Cabinet. If the *Saeima* makes a decision that involves expenditures not included in the Budget, then this decision must also allocate funds to cover such expenditures. After the end of the budgetary year, the Cabinet must submit an accounting on budgetary expenditures for the approval of the *Saeima*.

Article 66 of the *Satversme* lays down the basic rules of the legal regulation on the State budget. This article has a certain structure: its first sentence defines: 1) the concept and purpose of the State budget; 2) the procedure for drawing up the State budget; 3) the rules on drawing up the State budget and submitting it to the *Saeima*; whereas its second sentence defines provisions regarding the content of the State budget, and the third sentence envisages *ex-post* control over the implementation of the State budget.

21.1. Article 66 of the *Satversme* reveals the principle of separation of powers, pursuant to which in the area of elaborating and examining the State budget the special competences of the executive power and the legislative power are separated. The executive power, i.e., the Cabinet, must develop the State Revenues and Expenditure Budget for the fiscal year but the legislative power, i.e., the *Saeima*, has to decide on it.

Only the Cabinet has the right to initiate the draft State budget law and it is the Cabinet, which is responsible for elaborating the proposed plan of the State budget.

The *Saeima* may include in the annual State budget additional expenditure only if it indicates to the Cabinet concrete sources of revenue.

In elaborating the draft State budget, the Cabinet has rather broad discretion; however, the principle of the state governed by the rule of law requires it to act within the framework of legal acts and law. The Cabinet's action is restricted by the objectives of the State defined in laws and concrete legal obligations, which follow from legal norms and acts on applying the law and for the financing of which the Cabinet must envisage appropriate resources. The same is reflected also in Section 1 (2) of the law "On Budget and Financial Management", which defines the purpose of the budget.

21.2. Several constitutional principles of the State budget law are revealed in the text of Article 66 of the *Satversme*, *inter alia*, the principle of the completeness of the State budget. Article 66 of the *Satversme* requires reflecting in the State budget all expected State revenue and planned expenditure. They must be reflected in the annual State budget in full, comprising all areas of the State's activities. All sources and amount of financing envisaged for the particular year, as well as expenditure must be covered in full and reflected in the State budget law so that both the Cabinet, in planning the budget, and the *Saeima*, in deciding on the budget, would have a true and clear perception of the expected State revenue and planned expenditure. Thus, the *Saeima* can examine the revenue estimates proposed by the Cabinet and decide whether they are real.

21.3. In drafting the State budget, the Cabinet must comply with consideration of economy. The Constitutional Court has recognized that the Cabinet's obligation to submit to the *Saeima* the draft State budget is not limited to submitting documents of certain content to the *Saeima*. The conclusion that follows from the second part of Article 66 of the *Satversme* is that the draft State budget law, to the extent possible, should comply with the actual economic situation in the State (*see Judgement of 3 February 2012 by the Constitutional*

Court in Case No. 2011-11-01, Para 15.1.). Thus, the principle of truthfulness of the State budget prohibits the Cabinet, as the institution which prepares the State budget, and the *Saeima,* as the institution which approves of the State budget, to include intentionally into the budget such planned revenue and expected expenditure which are based on obviously erroneous assumptions (forecasts) and calculations, i.e., calculations that are unrelated to the actual situation. This does not exclude the possibility to make reasonable forecasts that the State expenditure would be lower or revenue higher. Likewise, Section 1 (2) of the law "On Budget and Financial Management" provides that in drawing up the budget it should be taken into account that the expenditure should be covered by appropriate revenue, and the need to ensure general economic balance should be considered. This means that the Cabinet must abide by and ensure the financing needed for performing the obligations defined in laws but in a way that would not undermine the economic balance of the State.

Whereas the obligation, defined in the law, to allocate a certain amount of financing in a way that prohibits the Cabinet from considering the forecasts of social-economic development, as well as from balancing the planned expenditure between all sectors, binds the Cabinet in the process of drawing up the budget. Substantially, such norm prohibits the Cabinet from preparing the draft State budget by considering the existing economic situation as well as the financial resources that are actually available to the State (*compare, see Judgement of 14 January 2002 by the Constitutional Court of the Republic of Lithuania in Case No. 25/01*). The more requirements demanding particular amount of budget financing are included in laws, the more the Cabinet's competence to decide freely on the priorities in financing the State's objectives, as well as the possibilities of the executive power to perform the State's tasks are restricted.

21.4. Article 66 of the *Satversme* provides that the State budget is to be adopted from time to time – annually, i.e., regularly, to cover one period of time – a fiscal year (*compare, see, Judgement of 10 June 1998 by the Constitutional Court in Case No. 04-03(98), the Findings*). The regularity of the State budget

law consolidates the positions of the legislative power, i.e., the *Saeima*, *vis-à-vis* the executive power, i.e., the Cabinet. This does not prohibit the *Saeima* from planning State revenue and expenditure also in broader boundaries, for example, by adopting a medium-term budget for three calendar years. This, of course, is a more abstract budget, which only outlines the estimated revenues and expenditure in long-term perspective but is not to be perceived as concrete authorization to the executive power to make certain expenditure or to act in order to gain certain income. The longer is the planned budget period, the more difficult it is both for the executive power and for the legislator to define more accurate estimates of State revenues and expenditure, and these difficulties may pose a threat to the truthfulness of the budget.

Thus, the elaboration and adoption of the State budget are based on the principle of separation of powers, as well as the principles of its completeness, economy and truthfulness, which, *inter alia*, prohibits from restricting the Cabinet in the process of drawing up the budget by imposing upon it the obligation to allocate a certain amount of financing in a way that prohibits the Cabinet from taking into account the social-economic estimates of economic development as well as from balancing the planned expenditure among all sectors.

22. Section 78 (7) of the Law on Higher Education Institutions requires the Cabinet to envisage every year a certain amount of financing and increase in it for covering the expenditure of the State institutions of higher education in connection with the gross domestic product of the State.

This requirement significantly restricts the Cabinet's competence and possibilities of drawing up an economically balanced State budget. By constantly "earmarking" in long-term a certain substantial part of expenditure in various laws, which go beyond the framework of one fiscal year, the *Saeima* is taking over the competence of drawing up the budget and significantly narrows this competence of the Cabinet. Thus, the competence of developing the budget actually is transferred from the executive power to the legislative power, but this

transfer is contrary to the principle of separation of powers and the first sentence of Article 66 of the *Satversme*.

Likewise, by defining certain parts of the State budget in various, laws the significance and purpose of the State budget law are ignored. If the *Saeima*, by other laws, allocates actually and in the long-term the budget expenditure in advance, then the necessity for united State budget law in general disappears. A State budget, fragmented like this, becomes untransparent and its management is hindered. However, the first sentence of Article 66 of the *Satversme* requires the Cabinet to draw up annually a united and transparent State budget law and the *Saeima* – to decide on it annually.

Finally, in adopting any decision on the budget the requirement of economic balance should be complied with. The budgetary economy is intrinsically linked to the rest of economic and fiscal policy. Therefore, it is the Cabinet's obligation to prepare independently a feasible State budget project. Therefore, Section 78 (7) of the Law on Higher Education Institutions, where the gross domestic product is used as an indicator for increasing the State budget, financing is only seemingly oriented towards national economic growth. The gross domestic product is only one of the indicators of economic growth. The linkage with it restricts the Cabinet, by denying it the possibility to abide duly with the principle of anti-cyclic fiscal policy, which follows from the principle of economy and is reflected in the text of "Fiscal Discipline Law', i.e., by prohibiting the Cabinet from implementing its own anti-cyclic economic policy, for example, in the case of increasing gross domestic product to decrease the financing for the State expenditure to make reserves or to dedicate more financing for covering the State external debt or the State budget deficit.

Hence, Section 78 (7) of the Law on Higher Education Institutions is incompatible with Article 1 and the first sentence of Article 66 of the *Satversme*.

Since Section 78 (7) of the Law on Higher Education Institutions is incompatible with Article 1 and the first sentence of Article 66 of the *Satversme*, the contested regulation shall be recognised as being compatible

with these norms of the *Satversme*.

23. At the court hearing, Mārtiņš Bondars, Chairperson of the Budget and Finance (Taxation) Committee of the 13th convocation of the *Saeima* noted: society should understand that Section 78 (7) of the Law on Higher Education is "a promissory norm", which had never been implemented.

Pursuant to Article 66 and Article 73 of the *Satversme*, only the *Saeima* has the right to budget. The people do not have the right to budget since the budget law cannot be put for a national referendum. The Constitutional Court has recognised that the adoption of the State budget law is an important function of the *Saeima*, which it performs as the institution, which is directly responsible before the people of Latvia. Compared to other constitutional institutions, involved in the elaboration and adoption of the State budget, it is the *Saeima* who has the most important constitutional legal role in fulfilling this constitutional task (*see Judgement of 3 February 20212 by the Constitutional Court in Case N0. 2011-11-01, Para 10*). The *Saeima's* special political responsibility before the people in connection with budgetary decisions also follows from this, and this responsibility is based on mutual trust because the *Saeima* has at its disposal only those resources that had been entrusted to it by the people.

The requirement that actions by all State institutions should be truthful follows from the principle of a state governed by the rule of law. The adoption of such legal norms, which from the very beginning have been only empty promises made to voters, which will not be implemented by the resources entrusted by the people, is incompatible with the principle of a state governed by the rule of law. Such actions endanger the very foundations of the State's democratic order, protected by the *Satversme.*

Moreover, the Constitutional Court draws the legislator's attention to the fact that norms that are similar to Section 78 (7) of the Law on Higher Education have been included also in several other laws. Keeping of such norms, if the *Saeima* ignores them while deciding on the State budget, first of all, causes incompatibility with the annual State budget law, as well as valid doubts regarding

the constitutionality thereof.

The Substantive Part

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

held:

1. To recognise Section 78 (7) of the Law on Higher Education as being incompatible with Article 1 and the first sentence of Article 66 of the *Satversme* of the Republic of Latvia.

2. To recognise the programmes 03.00.00 "Higher Education", 02.03.00 "Higher Medical Education", 20.00.00 "Cultural Education" and sub-programme 22.02.00 "Higher Education" of Annex 4 to the Law "On the State Budget for 2019", as well the subsidies envisaged in these programmes for State higher education institutions as being compatible with Article 1 and the first sentence of Article 66 of the *Satversme* of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement enters into force at the moment it is delivered.

Chairperson of the court hearing Sanita Osipova