THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT
on Behalf of the Republic of Latvia
in Riga, on 25 June 2020
in Case No. 2019-24-03

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

with the participation of Ombudsman Juris Jansons and the Ombudsman's authorised representative Ineta Rezevska,

Elīna Celmiņa, the authorised representative of the institution, which issued the contested act, the Cabinet,

the secretary of the court hearing Anna Elizabete Šakare,

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 3 of Section 16, Para 8 of Section 17(1) and Section 28 of the Constitutional Court Law,

at the court hearing held in Riga on 19, 20 and 26 May 2020, with the participation of the participants in the case, examined the case

"On Compliance of Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income Level" with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia".

The Facts

1. On 18 December 2012, the Cabinet adopted Regulation No. 913 "Regulation on the Guaranteed Minimum Income Level" (hereafter – Regulation No. 913).

Para 2 of Regulation No. 913 provided that the amount of the guaranteed minimum income for a person was 35 lats of 49.80 euro per month.

1.1. By Regulation of 12 December 2017 No. 731 "Amendments to the Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income", which entered into force on 1 January 2018, the number "49.80" in Para 2 of Regulation No. 913 was replaced by the number "53".

Thus, after these amendments, Para 2 of Regulation No. 913 provided "The amount of the guaranteed minimum income level for a person shall be 53 euro per month" (hereafter the guaranteed minimum – the contested regulation).

1.2. By Regulation of 1 October 2019 No. 454 "Amendments to the Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income"" (hereafter – Regulation No. 454), which entered into force on 1 January 2020, the number "53" in Para 2 of Regulation No. 913 was replaced by the number "64".

Thus, following these amendments, Para 2 of Regulation No. 913 provides that the amount of guaranteed minimum income to a person is 64 euro per month.

2. The applicant – the Ombudsman – holds that the contested regulation is incompatible with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

By the letter of 12 April 2019, the Ombudsman had turned to the Cabinet, calling upon it to comply with the *Satversme* in determining the amount of the guaranteed minimum income level (hereafter – GMI). However, the Cabinet did not eliminate the deficiencies referred to in the letter because it kept the amount of GMI in the amount defined in the contested regulation.

2.1. The State's obligation to guarantee a standard of living that complies with human dignity is said to follow from the principle of a socially responsible state. Social assistance should be such that would ensure at least the minimum pre-conditions for a life worthy of human dignity. I.e., it should ensure not only physical subsistence of a person but also the possibility to retain the status of a full-fledged member of society. Food, clothing, housing, medical assistance and compulsory education is the minimum that should be ensured to all.

The legislator has established a state social security system, consisting of social insurance and social assistance. One of the types of social assistance that is granted to families or persons living separately, who, due to objective reasons, do not gain sufficient income and have been recognised as being needy, is the benefit for ensuring the GMI level. That is the last possible benefit from public

resources available to inhabitants with the lowest income or no income at all. Thus, it is disbursed to the poorest inhabitants. Statistical data show that approximately a half of all persons, who receive the benefit for ensuring the GMI level, belong to a group of the most vulnerable persons, i.e., these are children, disabled persons or retirement-age persons.

Pursuant to Section 35 (1) of "Law on Social Services and Social Assistance" (hereafter – the Social Assistance Law), the aforementioned benefit, as well as the housing benefit are disbursed to a person by the local government from its basic budget resources. Thus, the legislator has ensured to needy persons the possibility to receive support in the form of a benefit for ensuring the GMI level and a housing benefit.

Section 36 (1) of the Social Assistance Law includes the legislator's authorisation to the Cabinet to set the GMI level. Since 1 January 2018, the GMI level has been set in the amount established in the contested regulation – 53 euro per month. Pursuant to Para 3 of Regulation No. 913, local governments have the right to set also a higher GMI level, which does not exceed the level of income set for recognising a person as being needy, i.e., 128.06 euro. However, the GMI level is still too low to ensure the minimum pre-conditions for an existence worthy of human dignity. Pursuant to research, to ensure healthy food, one person needs at least 153 euro per month. However, the GMI level is almost three times lower than this amount.

In addition to the benefit for ensuring the GMI level, local governments disburse to a needy person also other benefits, for example, housing benefits, benefits for health care and education. However, local governments lack a uniform approach to disbursing the housing benefit. Moreover, the majority of local governments disburse the housing benefit only during the heating season, thus, a needy person is not ensured monthly support for ensuring housing. Pursuant to statistical data, in 2018, the average housing expenditure was 150 euro per one household. Likewise, studies show that, although both State and local government involvement in covering health care costs is ensured, the support is not sufficient for appropriate health care. Likewise, the local government benefit for the acquisition of education is said to be symbolic, usually, it is disbursed once per year at the beginning of the school year. Hence, the current totality of support measures in the form of local government social benefits is said to be insufficient.

2.2. The purpose of setting the GMI level is to provide to a person material support to ensure food, clothes and, partially, also housing, health care and compulsory education. Calculations show that the required GMI level for satisfying these needs would be 1.77 euro per day. This can be equalled to the level of absolute poverty, recognised by the World Bank. Since pursuant to the assessment by the World Bank, Latvia has been recognised as being a high-income country, the threshold value of poverty should be 19.79 euro per day or 594 euro per month.

The GMI level is not substantiated by concrete criteria or indicators but has been set as the result of negotiations between the Ministry of Welfare and the Latvian Association of Local and Regional Governments. Moreover, the State has not fulfilled its duty to review this level regularly. Although stable economic growth continues in Latvia, the average salary and the average level of consumer prices increase, from 2013 to 2017, the GMI level had been reviewed only once and was increased by 3.20 euro per month. Whereas in 2019 it was increased by 11 euro per month and set in the amount of 64 euro. However, neither the GMI level in the amount of 53 euro nor in 64 euro is sufficient to ensure a standard of living worthy of human dignity. It is alleged that the government's attitude thus far, ignoring the poorest people, their rights and needs for a long time, reveals a lack of respect for these persons.

Moreover, in adopting the contested regulation, the legislator had violated also the principle of prohibition of discrimination, included in the second sentence of Article 91 of the *Satversme*. The established GMI level denies the needy person equal opportunities to obtain education as well as comprehensive access to health and culture services.

2.3. At the court hearing, the Ombudsman and his representative Ineta Rezevska repeated the arguments mentioned in the application and noted additionally: although the contested regulation and the benefit for ensuring the GMI level, closely linked to it, was not the only support mechanism available to a person with very low income, nevertheless, the support provided by the State and local governments was not sufficient for providing for a person's needs at least in the minimum amount. The state social benefits, in turn, are granted to a certain circle of persons – families with children, disabled persons, and they have a particular purpose, which is not linked to providing for the basic needs.

At the court hearing, the Ombudsman underscored that the GMI level had been determined by a political agreement, without concrete methodology, based

on economic considerations. This procedure is said to be contrary to the principle of a socially responsible state. The principles and the method for determining the GMI level are said to be a substantial matter, to be decided by the legislator.

3. The institution, which issued the contested act, – **the Cabinet** – notes in its written reply that the contested regulation complies with Article 1 and Article 109 of the *Satversme*.

3.1. By Regulation No. 454, the Cabinet had raised the GMI level, determining that since1 January 2020 it was 64 euro per month. This is said to be one of the most significant measures introduced during the last decade to improve support for persons with very low income. Amendments to the contested regulation could be the grounds for terminating legal proceedings in the case.

3.2. The support for ensuring the GMI level is a benefit in cash and kind or a benefit in cash or kind that local governments grant to families or persons living separately, who, due to objective reasons, do not gain sufficient income and has been recognised as being needy. This benefit ensures the defined GMI level for each member of the family

The Cabinet reviews the GIM level every year, in connection with the annual draft state budget law. It is set in the Cabinet Regulation, with a prior agreement on it between the Ministry of Welfare and the Latvian Association of Local and Regional Governments. Since 2006, the Ministry of Welfare in negotiations with the Latvian Association of Local and Regional Governments has always proposed increasing the GMI level. In preparing the proposed solutions, the measures of both state and local government social assistance measures and the inflation level and the level of minimum income in the state had been analysed. However, the Latvian Association of Local and Regional Governments did not agree to increase the GMI level, pointing to the financial inability of some local governments to ensure support if the GMI level were to be increased, as well as to the lack of co-financing by the State. In the period from 2009 to 2013, when the number of social assistance recipients had been high, the State had provided support to local governments to disburse the benefits for ensuring the GMI level. However, currently, this benefit is disbursed only from the resources of the local government budgets.

It should be taken into account that the method for calculating the benefit for ensuring the GMI level allows a person to receive this benefit also in the case if his or her actual income exceeds 53 euro per month. I.e., in assessing the

economic situation of a family applying for social assistance, the following income is not taken into account: the state family benefit, the surplus payment to the state family benefit for a disabled child, the benefit for caring for a disabled child, the benefit to a disabled person in need of care, the benefit for using an assistant to persons with Group 1visual disability, the benefit to compensate for the transport costs to a person with impaired mobility, the benefit for a child with the celiac disease, the childbirth benefit, the benefit in the case of a person's death as well as some other social assistance benefits defined in the Social Assistance Law.

3.3. The housing benefit as well as other social assistance benefits, defined in the binding regulations of a local government, are disbursed to persons who receive the benefit for ensuring the GMI level, e.g., the benefit for purchasing school supplies, clothes and footwear, for covering the costs of health care services. To ensure support to different groups of inhabitants, the local government may discretionally provide also other types of assistance.

The main aim of the benefit for ensuring the GMI level is to provide for a person's basic need for food. Pursuant to the survey data of the Central Statistical Bureau, in 2016, the expenditure for purchasing food of the neediest persons had been 60.95 euro per one member of the household. Thus, the GMI level provides for the needed food in the amount of 80 per cent. It should also be taken into account that persons in a situation of crisis may receive support for the neediest persons from the Fund for European Aid for the Most Deprived. Likewise, in 2018, there had 458 points for distributing food and basic material support and 23 points for distributing meals on the territory of Latvia.

In 2017, 23.3 per cent of inhabitants were subject to the risk of poverty. These are persons with income below 367 euro per one person-equivalent in a household. Being aware of the need to decrease social injustice and poverty, policy planning documents envisage various measures for gradually improving the support system for the needy, *inter alia*, in 2014, the Cabinet had approved the concept paper "On Determining the Minimum Income Level" (hereafter – the Concept Paper). The Concept Paper envisages setting of the minimum income level in the amount of 40 per cent of the median income at a household's disposal per consumer-equivalent, applying a scale of equivalence. With respect to the GMI level, this is said to be 20 per cent of median income at the household's disposal.

In assessing the compliance of the contested regulation with Article 1 and Article 109 of the *Satversme*, it should be examined in interconnection with other types of state and local government support envisaged for persons with very low income. The state and local government support measures, envisaged for these persons, should be economically substantiated and commensurate with the interests and financial possibilities of society in general. Moreover, this system should provide incentives for persons to become integrated into the labour market to gain income independently to ensure an adequate level of it.

3.4. During the court hearing, Elīna Celmiņa, the Cabinet's representative, repeated the arguments stated in the written reply and noted additionally that the social security system, established in Latvia, complied with such criteria as the existence of such system, its adequacy and accessibility. Although the GMI level has been defined in the Cabinet Regulation, the disbursement of this benefit for ensuring this level is the autonomous competence of local governments.

In the framework of social security system, in addition to the benefit for ensuring the GMI level also other state and local government support measures for providing for the basic needs are said to be accessible to a person. The totality of these measures allows a person to exercise the right to social security, included in Article 109 of the *Satversme*. A person's basic needs for food, clothing and housing should be mainly ensured by the social assistance benefits, *inter alia*, the benefit for ensuring the GMI level. However, social assistance is individual as to its nature, therefore the purpose for which it is used is not regulated.

Until now, one universally recognised method for determining the minimum income level has not been developed in the world. Therefore the State has discretion in choosing the most appropriate solution. The current method, in accordance with which the GMI level has been determined by agreeing with the Latvian Association of Local and Regional Governments, is said to not be incompatible with the *Satversme*. However, in adopting the Concept Paper, the Cabinet has recognised that the current approach to setting the GMI level needs to be improved and has envisaged a method for setting it. Moreover, the minimum basket of consumer goods and services for various types of households is being developed.

4. The summoned person – the *Saeima* – notes that the State has the obligation to balance its commitments in the area of social rights with its economic possibilities, not to hinder the fulfilment of other duties of the State.

The benefit for ensuring the GMI level does not depend on the social insurance contributions made the person but on the financial resources available to the State. Therefore, the State has broad discretion in adopting the legal regulation linked to the GIM level.

4.1. The *Satversme* does not define the State's obligation to set the GMI level or set out concrete provisions for defining this level or the amount thereof. In the particular case, the State has set out in the Social Assistance Law the GMI level and the benefit, closely linked to it, for ensuring this level. However, in assessing the compliance of the GMI level with Article 109 of the *Satversme*, also other measures of the social security system should be taken account, which are envisaged for needy persons in addition to the benefit for ensuring the GMI level. I.e., a housing benefit has also been envisaged for needy persons, it is disbursed by the local government from its basic budget. Likewise, these persons have the right to rent a social apartment. The local government also has the right to establish other benefits to provide for a person's basic needs, to envisage support for educating and raising children, in searching for a job or housing.

The reliefs for needy persons, established in regulatory enactments, also should be taken into account. Moreover, also private persons can ensure support to the needy persons. To promote the employment of groups of inhabitants under the risk of social isolation, the Social Enterprise Law has been adopted to create a favourable business environment for social enterprises. Likewise, the Public Benefit Organisation Law has been adopted with the aim to foster public benefit activities, i.e., charity of associations and foundations, as well as religious organisations and their institutions.

4.2. With the purpose of facilitating the welfare of persons, it is important to ensure conditions, in which the person could independently gain income from his or her work and reach an appropriate standard of living, irrespectively of the social benefits and services established in the state. It is also the personal responsibility of the individual – to take care of ensuring living conditions worthy of human dignity for oneself.

The fundamental principles for determining the GMI level is said to not be an issue, which, in accordance with the substantivity theory, would fall within the legislator's exclusive competence. The Cabinet also could regulate this matter in its Regulation, on the basis of the legislator's authorisation. Moreover, the legislator already has regulated in the Social Assistance Law important issues related to the GMI level, i.e., provided that a separate benefit is used to ensure it,

defined the purpose and procedure for the disbursement of this benefit, as well as has envisages that the Cabinet has the obligation to review the GMI level each year, in connection with annual draft state budget law.

At the court hearing, Jānis Priekulis, the summoned person's representative, repeated the arguments presented in the written opinion and underscored that the *Satversme* did not set a concrete GMI level that the State would be obliged to ensure. The contested regulation and the benefit for ensuring the GMI level, closely linked to it, are said to be only of the measures within the framework of the state social security system. The Cabinet has exercised the authorisation to set the GMI level, granted to it. The methodology for setting this level could be improved, however, *per se*, cannot be the grounds for recognising the contested regulation as being incompatible with the *Satversme*. In assessing the compliance of the contested regulation with the *Satversme*, other support measures available to the needy persons also should be taken into account.

5. The summoned person – the Ministry of Welfare – upholds the statements made in the Cabinet's written reply and is of the opinion that the contested regulation complies with Article 1 and Article 109 of the *Satversme*.

At the court hearing, representatives of the summoned person Ilze Skrodele-Dubrovska, Līga Āboliņa and Maruta Pavasare added to the arguments presented in the written opinion and noted: to decrease poverty and social exclusion, the way the minimum income levels, including GMI, are determined should be improved. To this end, the Cabinet has approved the Concept Paper in 2014. The GMI level defined in the contested regulation is not economically substantiated, and it cannot be regarded as being sufficient. However, it should be taken into account that the GMI level and the benefit closely linked to it for ensuring this level is only one the elements in the social security system, created by the State and local governments, and its main purpose is to provide for a person's basic need for food.

6. The representative of **the summoned person – the Ministry of Justice** – Laila Medina noted at the court hearing that the State had broad discretion in implementing social rights. However, the framework for exercising this discretion is linked both to the economic situation of the state and the norms and principles of the *Satversme*.

The totality of social measures, introduced by the State with respect to needy persons, should ensure the minimum pre-conditions of life worthy of human dignity; i.e., measures that ensure a person's physical existence and allows him or her to retain the status of a full-fledged member of society. However, it should be taken into account that a person's right to a particular social assistance benefit or a particular amount of it does not follow from the *Satversme*. The compliance of the contested regulation with the *Satversme* should be examined in the context of the entire social assistance system, created by the State and local governments, verifying, whether the totality of respective measures reaches its aim – to ensure the minimum pre-conditions for a life worthy of human dignity. The chosen solution also should be aligned with the interest of the entire society – to create such sustainable system of socials security that would motivate persons to become integrated into the labour market and, thus, would balance the impact of the measures of social assistance system on the state and local government budgets. The State should ensure that the chosen solution would reach the aim of providing for a person's basic needs.

The legislator has regulated all most substantial issues in the Social Assistance Law and has authorised the Cabinet to set the GMI level. Since the setting of the GMI level is linked to the need to examine the actual circumstances and the effectiveness of the implementation of the previous valid regulation, it is entirely reasonable that the Cabinet defines the GMI level. The authorisation granted to the Cabinet also allows to develop a detailed methodology for determining the GMI level. The agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments is said to be an essential part of this process. It is important to have this dialogue between local governments and the Cabinet because social assistance, reasonably, has been placed in the autonomous competence of local governments. It is important that all parties use methodologically substantiated arguments in this dialogue; however, the final decision on the particular solution is reached through an agreement of the parties.

7. The summoned person – the Bank of Latvia – notes that the GMI level is one of the elements in the state social security system, therefore the compliance of the contested regulation with Article 1 and Article 109 of the *Satversme* should be examined in the context of the entire social assistance system, established in the state.

The distribution of income in Latvia is one of the most unequal within the European Union. Likewise, the share of inhabitants under the risk of poverty is one of the highest within the European Union; i.e., in 2018, 23 per cent of inhabitants were subject to the risk of poverty, the majority of them – retired persons. Moreover, this number tends to increase in the recent years. Amendments to the regulation on labour taxes are not the most effective instruments for decreasing the share of inhabitants subject to the risk of income inequality and poverty. In this respect, social benefits, aimed directly at supporting the needy households, are much more effective.

In 2018, the expenditure for fulfilling the function of social security had constituted 11.7 per cent of the gross domestic product or approximately 30 per cent of the entire general expenditure of the government sector. It should be taken into account that the benefit for ensuring the GMI level is only a small part of the entire social security system. I.e., currently, the income tested benefits amount only to 1.1 per cent of the expenditure for social security, and the amount of this expenditure has decreased in the recent years. The makers of social policy would have grounds to consider whether its share in Latvia's system of social security should not be increased.

Since 2003, when the GMI level was introduced in Latvia, it has increased faster than the level of prices. Moreover, the price increase of the consumption basket of the neediest households has been lower compared to the national average. This means that the purchasing power of the recipients of the benefit for ensuring the GMI level has increased over time. However, this increase has been significantly smaller compared to the recipients of the average salary, employed in the economy.

At the court hearing, the representatives of the summoned person Edvards Kušners and Uldis Rutkaste added to the arguments expressed in the written opinion and noted that two methodologies for calculating GMI existed – the absolute and the relative method. If the absolute method is applied, then the aim of the regulation must be precisely defined in the legal norms and the basket of goods and services required to reach this aim should be determined. Whereas in the case of the relative method, the minimum level should be determined through comparison with other social groups. This method allows determining a level that would comply with the social reality in the state in the particular moment. The principle of sustainable development requires the minimum of social assistance

to be commensurate with the minimum salary defined in the state and, thus, would motivate persons to gain income independently.

8. The summoned person – the Latvian Association of Local and Regional Governments – upholds the statements made in the Cabinet's written reply that, in the examination of the compliance of the contested regulation with Article 1 and Article 109 of the *Satversme*, it should be taken into account that the benefit for ensuring the GMI level is only one of the elements in the social security system, established by the State.

Allegedly, the benefit for ensuring the GMI level is not aimed at providing for the basic needs of a person – food, clothing, housing, health care, and compulsory education. Other types of social assistance and services are also accessible for satisfying many needs, e.g., the housing benefit; moreover, needy persons are released from paying the patients' fees and the co-payment for reimbursement medicines, likewise, compulsory education is free of charge, and the State ensured health care to children also is provided free of charge.

The GMI level is set every year, by the Ministry of Welfare and the Latvian Association of Local and Regional Governments agreeing on it. Hence, it is an amount set as the result of a compromise and is not based on concrete calculations. One of the reasons why, until now, a higher GMI level has not been defined, is the fact that the benefit for ensuring this level must be disbursed from the local government budget resources. The right to social assistance falls within the scope of Article 109 of the *Satversme*, therefore the State should participate in ensuring this right. In the Social Assistance Law, the legislator has authorised local governments to ensure persons' right to social assistance, i.e., to disburse the benefit for ensuring the GMI level, however, it has not granted resources for fulfilling this function.

In determining the GMI level, it should be linked to the amount of minimum salary, otherwise, people would not be motivated to gain income independently. A situation, where a working-age person who does not work receives from the system of social assistance as much or even more than a person who works and receives the minimum salary, is inadmissible.

At the court hearing, the summoned person's representative Māris Pūķis repeated and supplemented the arguments presented in the written opinion and, in particular, underscored: if the Cabinet has determined the GMI level then it is the State's responsibility – to ensure the standard of living worthy of human dignity.

The State should grant resources to local governments for ensuring this standard. The fact that the State has not allocated resources for ensuring the GMI level has prevented from increasing GMI in accordance with the economic situation in the state. Local governments should ensure from their budget resources only those support measures that are intended in addition to the benefit for ensuring the GMI level.

9. The summoned person – association "EAPN-Latvia" – holds that the contested regulation is incompatible with Article 1 and Article 109 of the *Satversme*.

In determining the GMI level, the value of the subsistence minimum basket of consumer goods and services for various groups of persons should be taken into account, e.g., employed persons, children or disabled persons. Only this indicator allows determining the amount of resources needed to provide for the actual needs of these persons. However, since 2014, the value of the subsistence minimum basket of consumer goods and services is not calculated in the state.

The GMI level, defined by the contested regulation, does not ensure that persons' basic needs are provided for even in the minimum amount. It is said to be inadmissible that the GMI level is determined by the Minister of Welfare and the Association of Local and Regional Governments through political agreement. The State has not fulfilled its obligation to review the GMI regularly and to ensure its conformity with the social reality and the costs of living.

At the court hearing, the summoned person's representative Andris Burtnieks repeated the arguments stated in the written opinion and noted, in particular, that the benefit for ensuring the GMI level should provide for all basic needs of needy persons.

10. The summoned person – social policy expert Ruta Zilvere – holds that the contested norms comply with Article 1 and Article 109 of the *Satversme*.

Although the level of income inequality and poverty is relatively high in Latvia, the issue of whether the defined GMI level is adequate should be separated from the issue of whether it complies with Article 1 and Article 109 of the *Satversme.*

The benefit for ensuring the GMI level is one type of social assistance benefits. Social assistance is based on the assessment of the person's (household's or family's) situation, and its aim is to offer to a person customised

and diverse measures. Simultaneously with the benefit for ensuring the GMI level, a person may receive other social assistance benefits and services both from the State and the local government, as well as from non-governmental organisations. Therefore, on the basis of general data and average statistical indicators, without analysing each case individually, it is impossible to conclude, whether the contested regulation complies with Article 109 of the *Satversme*.

Since social assistance is pronouncedly individual by nature, there is no international instrument that would define the amount, in which social assistance should be ensured. Allegedly, the Revised European Social Charter provides only that the State has the obligation to ensure appropriate assistance to all persons, who lack the respective resources and are unable to ensure these resources either by their own means or from other resources. The obligation "to ensure" does not mean that the State would have to disburse mandatorily a certain amount of money to the person or to provide any service in kind. It only means that the State has the obligation to establish and maintain a system that would help a person access the necessary resources.

The amount of social benefits should be commensurate to other types of income. I.e., the social assistance benefits that are granted irrespectively of the person's individual contribution to the creation of common public good, as to their amount, should not be too close to a working persons' or a family's income from work and insurance pensions or benefits, otherwise, persons are not motivated to get out of poverty and participate in the labour market. From the perspective of society's common interests, the priority should be given to a person's right to work worthy of human dignity and to fair remuneration as well as sufficient social security in the cases of risk related to the loss of income from work. Social assistance benefits and services are necessary, however, only as the last resort for diminishing poverty.

Allegedly, the contested regulation complies with Article 1 of the *Satversme*. The GMI level is determined by the government, hearing also the local governments' opinion and taking it into account. Moreover, local governments have broad discretion in choosing various social assistance benefits and services. Although, in general, the legislator and the government have not paid sufficient attention to decreasing income inequality and poverty, small progress in this area can be observed. This is proven, *inter alia*, also by the fact that, as of 1 January 2020, the GMI level has been increased up to 64 euro per month.

At the court hearing, the summoned person added to the arguments stated in the written opinion and underscored that the GMI level, defined in the contested norm, was only part of the social assistance system. The adequacy of one type of social assistance benefit cannot be assessed in isolation from other measures of social assistance, *inter alia*, social services and reliefs Moreover, in Latvia, a very small percentage of resources is channelled for social services, although increasing the benefit for ensuring the GMI level is substantiated, often, however, only assistance in the form of social service rather than financial benefit can ensure to the person the required support.

11. The summoned person – lecturer of Riga Stradins University *Mg. iur.* Zane Vorslava – holds that the contested regulation complies with Article 1 and Article 109 of the *Satversme*.

The exercise of social rights is said to depend on the economic situation and available resources in each state. In the meaning of the Social Assistance Law, social assistance should provide for a person's basic needs, i.e., food, clothes, housing, health care, and compulsory education. However, in the context of social rights, "ensuring the standard of living worthy of human dignity" should be differentiated from "ensuring quality of life". The quality of life is an indicator of the welfare of a person, a family, a group of persons, and society, which includes physical and mental health, leisure time and the use of it, work, education, link to society, the right to make decisions independently and to implement them, as well as material provisions. Thus, it is characterised by a totality of several complex conditions.

Each person, who, due to objective reasons, does not gain sufficient income and has been recognised as needy, has the right to receive not only the benefit for ensuring the GMI level but also social assistance of other kinds, provided by the State and local governments, – both in cash and in the form of various services. Thus, these persons have all the possibilities to ensure to them a standard of living that is worthy of human dignity. It should also be taken into account that the Cabinet, by Regulation No. 454 has raised the GMI level.

12. The summoned person – professor at the University of Latvia *Dr. iur.* Jānis Lazdiņš – noted at the court hearing that a socially responsible state was based on human dignity and the State had the obligation to safeguard it. Human dignity is the most important principle derived from the *Satversme*, the

essence of fundamental rights. However, human dignity should be defined as a fundamental right so that a person could defend his or her dignity if it is violated.

Allegedly, human dignity requires the State to ensure to each person the necessary subsistence minimum – food, clothes, housing, health care, and compulsory education. However, only that is not enough. Standard of living that is worthy of human dignity means also ensuring, at least on a minimum level, a person's inclusion in social life, retaining the status of a full-fledged member of society. I.e., a person should be ensured the possibility to satisfy cultural needs, as well as to participate in the political life of the state. In Latvia, the minimum required for such life, worthy of human dignity, has not been calculated. Hence, it is impossible to ascertain, whether the contested regulation, in interconnection with other measures of social assistance, complies with the *Satversme*. However, to motivate people to gain income themselves, the totality of social assistance should be balanced with the minimum salary after taxes, set in the state. Moreover, the minimum that a household needs for subsistence and the basic principles for defining it are said to be a matter of such importance that it should be decided on by the legislator itself.

13. The summoned person – Head of the Sociology Department of the University of Latvia *Dr. sc. soc.* Baiba Bela – noted at the court hearing that the threshold of absolute poverty was approximately 1.74 euro per day. Latvia is among the countries with high development index; therefore it is not clear why support for the needy persons has been set on the level of the threshold of absolute poverty. The European Committee of Social Rights and the Organisation for Economic Co-operation and Development also have assessed the thresholds of minimum income set in Latvia as being too low.

Pursuant to the data of the Central Statistical Bureau of 2018, income in the 1st group of quintiles, i.e., in the group of inhabitants with the lowest income, is 162 euro per one person in the household. However, the inhabitants note that this income should be at least in the amount of 414 euro, otherwise decent life is not ensured. If a person's monthly income is approximately 170 euro then it is impossible to provide for all basic needs and ensure life worthy of human dignity. It can be ensured only if the income per one person in the household exceeds 400 euro per month.

Also persons capable of work and working persons receive the benefit for ensuring the GMI level. This shows that the minimum salary, defined in the state, is not adequate and does not motivate people to participate in the labour market and gain income. Pursuant with the statistical data of 2018, on average, a person received the benefit for ensuring the GMI level for approximately five months and the average amount of it had been 42 euro. The amount of the benefit is very small; hence, it is not the most suitable measure for motivating people to integrate into the labour market and for decreasing social inequality. The longer a person is subject to poverty the harder it is for him or her to return to the labour market. The examples of the European Union welfare states show that, although the benefits are high there, the employment level remains high. Hence, there are no grounds to consider that better social security will decrease a person's wish to provide for oneself.

Social assistance in local governments is provided, depending on the financial possibilities and awareness. Therefore, persons with equivalent income level and material status have not been ensured the possibility to receive equivalent social support in certain situations of life. There are no grounds to hold that other types of social assistance allow a person to provide for those basic needs, for the provision of which the benefit for ensuring the GMI level is not intended

To determine the minimum of social assistance, the threshold of risk of poverty can be taken into account or the absolute method can be used, determining through surveys or other measures the necessary expenditure, depending on the type of household.

14. The summoned person – docent at the Department of Nutrition of the Latvia University of Life Sciences and Technologies *Dr. oec.* Ingrīda Millere – noted at the court hearing that a person with low energy consumption needed 2000 calories per day for healthy nutrition. The total costs of the respective products amount to 3.12 euro per day or 93.60 euro per month. If a person's energy consumption is higher than these costs are by at least 10 per cent higher.

A different basket of food consumption has been established in a study conducted within the framework of the project financed by the European Commission "The European Reference Budgets Network". I.e., it is concluded that in 2015 in Riga one person needed 153 euro, but a family with two children

– 574 euro per month. The difference could be explained by the fact that the basket of food products was calculated for persons with a higher level of energy consumption. Whereas the food packages, granted to needy persons, which often contain products subject to heat treatment, cannot ensure balanced and healthy nutrition in the long-term because such products do not contain all nutrients that a person needs.

15. The summoned person – ***Dr. oec.*** **Edgars Voļskis** – noted at the court hearing that the system of social security was based on such principles as solidarity, justice and voluntary nature. To ensure to a person socioeconomic protection in circumstances, where he or she needs assistance and does not gain income from the social insurance system, the social assistance system has been established. Its objective is to provide fixed-term and economically limited social assistance with the aim to integrate the person into the social insurance system. The person, in turn, upon receiving social assistance, has the duty to participate.

The compliance of social assistance benefits, *inter alia*, the benefit for ensuring the GMI level, with Article 1 and Article 109 of the *Satversme*, should be assessed by taking into account also the socioeconomic resources, available in the state and the local government, and determining what kind of assistance the particular household needs.

The social assistance system is constituted not only by social benefits but also social services, and also this should be taken into account in examining the constitutionality of the contested regulation. The value of social services can be expressed in monetary terms. The concrete per cent of the median income at the disposal of households cannot be used as the criterion for the adequacy of the social assistance since households differ and have different incomes. The level of fungibility of income should be used, which is determined, by taking into account the previously gained income and the particular needs of a household in a certain geographical unit.

The Findings

16. The Constitutional Court has noted: before the constitutionality of the contested norm is reviewed on its merits, all issues of procedural nature should be examined (*see, for example, Judgement of 10 February 2017 by the Constitutional Court in Case No. 2016-06-01, Para 17*).

Para 2 of Section 29 (1) of the Constitutional Court Law provides that the legal proceedings in a case may be terminated before the judgement is delivered if the contested legal norm has become void. This provision is aimed at ensuring the effectiveness of the legal proceedings before the Constitutional Court, so that the Court should not deliver a judgement in cases, where the dispute no longer exists. If the dispute no longer exists, the proceedings become meaningless (*see, for example, Decisions of 18 April 2016 by the Constitutional Court on terminating legal proceedings in Case No. 2015-15-01, Para 5*). However, the law provides for the Constitutional Court's right to terminate legal proceedings rather than the obligation to do so. The fact that the norm that has been contested in the case has become void *per se* is not always the grounds for terminating legal proceedings (*see, for example, Decision of 29 March 2011 by the Constitutional Court on terminating legal proceedings in Case No. 2010-68-01, Para 8*).

By Regulation No. 454, which entered into force on 1 January 2020, the contested regulation was expressed in a new wording.

Hence, the Constitutional Court must verify, whether legal proceedings in the case should be continued.

16.1. In the meaning of Para 2 of Section 29 (1) of the Constitutional Court Law, the concept of "contested norm" should not be understood formally, i.e., solely as the text included in the regulatory enactment. The contested norm is a certain legal order, which the Applicant holds as being incompatible with a legal norm of higher legal force. Therefore, also in those cases, where the text of the contested norm has been formally amended or even deleted from the regulatory enactment, the Constitutional Court must ascertain that, as the result, the contested legal regulation has been amended or deleted from the regulatory enactment also on its merits (*see Judgement of 15 May 2018 by the Constitutional Court in Case No. 2017-15-01, Para 14, and Decision of 20 June 2018 on terminating legal proceedings in Case No. 2017-19-01, Para 6*). I.e., it must be verified, whether the legal situation, caused by the contested norm, has been substantially eliminated (*see, for example, Decision of 11 March 2015 by the Constitutional Court on terminating legal proceedings in Case No. 2014-33-01, Para 7*).

The contested regulation, which was in force until 31 December 2019, set the GMI level for a person as 53 euro per month. By Regulation No. 454, the number "53" in the contested regulation was replaced by the number "64". Thus,

by these amendments, the Cabinet has increased the GIMI level for a person by 11 euro, providing that it is 64 euro per month.

The Ombudsman notes that, although the Cabinet has amended the contested regulation, the GMI level established by it still does not comply with Article 1 and Article 109 of the *Satversme*. I.e., the GMI level, set since 1 January 2020, – 64 euro per month, is still insufficient for providing for the basic needs of needy persons and does not ensure to these persons the possibility to lead a life worthy of human dignity. Hence, these amendments have not resolved the issue of the GMI level's constitutionality on its merits (*see, Case Materials, Vol. 2, pp. 45–46*).

At the court hearing, the Ombudsman specified that the compliance of Para 2 of Regulation No. 913, in force since 1 January 2020, with the *Satversme*, should be examined. The Cabinet's representative also agreed, at the court hearing, that the legal proceedings should be continued, reviewing the constitutionality of the aforementioned legal norm (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, p. 22 and 56).*

The Constitutional Court concludes that, by Regulation No. 454, the Cabinet has amended the contested regulation; however, the contested legal norm substantially continues to regulate the same legal relationship.

In these conditions, the Constitutional Court has no grounds for applying Para 2 of Section 29 (1) of the Constitutional Court Law and it must continue the legal proceedings in order to, taking into account the arguments stated in the Ombudsman's application and additional explanations, review the constitutionality of Para 2 of Regulation No. 913 in the wording that is in force since 1 January 2020 (hereafter – the contested norm). The arguments included in the Cabinet's written reply and expressed during the court hearing, as well as the opinions of the summoned persons are applicable to the examination of the compliance of the aforementioned legal norm with Article 1 and Article 109 of the *Satversme*.

16.2. The present case was initiated on the basis of the Ombudsman's application. Para 8 of Section 17 (1) of the Constitutional Court Law as well as Para 8 of Section 13 of the Ombudsman Law provide that the Ombudsman has the right to submit an application regarding initiation of a case if the institution or the official, who issued the contested act, has not eliminated the deficiencies, identified by the Ombudsman, within the term set by him.

Therefore, the Constitutional Court must verify, whether the procedure, set out in Para 8 of Section 17 (1) of the Constitutional Court Law as well as Para 8 of Section 13 of the Ombudsman Law, has been complied with. The Constitutional Court has recognised that the aim of the aforementioned norms is to achieve, insofar possible, resolution of a constitutional dispute before the involvement of the Constitutional Court. This means that the Ombudsman must disclose his arguments regarding the incompatibility of a contested norm before he submits an application to the Constitutional Court. This is needed to allow the institution or the official, who has issued the norm contested by the Ombudsman, to eliminate the incompatibility of the norm themselves. If the institution or the official, who has issued the norm contested by the Ombudsman, later, i.e., during the legal proceedings initiated at the Constitutional Court, amends the norm that is contested in the Ombudsman's application, the Ombudsman does not have to turn repeatedly to the institution or the official, who issued the contested norm. However, if the amending or deleting of the contested norm comply with the Ombudsman's recommendation, he has the right to submit a procedural request regarding termination of the legal proceedings (*see, Judgement of 15 May 2018 by the Constitutional Court in Case No. 2017-15-01, Para 15*).

It follows from the materials in the case that, on 12 April 2019, the Ombudsman had sent a letter to the Cabinet "On the Compliance of Para 2 of Regulation No. 913 with Article 1 and Article 109 of the *Satversme*". It was noted therein that the GIMI level set by the Cabinet – 53 euro per month – did not ensure to a person the right to social security at least in the minimum amount. The Cabinet was requested to determine by 12 June 2019 such GMI level that would be based on concrete calculations and approximated to the threshold of the risk of poverty (*see Case Materials, Vol. 1, pp. 22–28*). After the adoption of the contested norm, the Ombudsman continued to express his opinion and, on 8 November 2019, sent to the Cabinet and the *Saeima* the letter "On the Compliance of Regulation No. 454 with Article 1 and Article 109 of the *Satversme*". Therein, the Ombudsman, substantially, had maintained the arguments expressed previously, noting that the increase of GMI by 11 euro per month was insufficient and incompatible with the current socioeconomic situation as well as the international human right standards. The Ombudsman had requested the Cabinet to eliminate the identified deficiencies and determine the GMI level in compliance with the *Satversme* by 6 December 2019 (*see Case Materials, Vol. 2, pp. 48 –51*).

The Constitutional Court finds that the Ombudsman has made his considerations regarding the constitutionality of the GMI level known to the Cabinet and, thus, has complied with the provisions of Para 8 of Section 17 (1) of the Constitutional Court Law as well as Para 8 of Section 13 of the Ombudsman Law, which must be met before turning to the Constitutional Court.

Hence, the legal proceedings in the case must be continued, and the Constitutional Court will review the compliance of the contested norm with Article 1 and Article 109 of the *Satversme*.

17. In his application, the Ombudsman has requested reviewing of the contested norm with Article 1 and Article 109 of the *Satversme* because he holds that the established GMI level is not sufficient to allow a person to provide for his or her basic needs and that this situation is contrary to the principle of a socially responsible state. At the court hearing, the Ombudsman specified that also the compliance of the contested norm with the principle of prohibition of discrimination, included in the second sentence of Article 91 of the *Satversme*, should be reviewed (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, p. 23).*

If the compliance of the contested norms with several norms of the *Satversme* is contested, then the Constitutional Court, taking into account the merits of the case, must determine the most effective approach to the compatibility review (*see Judgement of 8 March 2017 by the Constitutional Court in Case No. 2016-07-01, Para 14.2.*). The Constitutional Court has also recognised that if the compliance of a norm issued in the area of social rights is contested simultaneously with the principles included in Article 1 of the *Satversme* and Article 109 of the *Satversme* then, usually the compliance with Article 1 is reviewed in interconnection with Article 109 of the *Satversme* (*see Judgement of 29 October 2010 by the Constitutional Court in Case No. 2010-17-01, Para 6.1.*).

The legal reasoning provided by the Ombudsman is based on the fact that the State has violated the principles of a socially responsible state and the state governed by the rule of law, which fall within the scope of Article 1 of the *Satversme*, because it had not fulfilled its obligation to establish such a system of social assistance that would ensure to needy persons a life worthy of human dignity. These arguments are linked to the Ombudsman's considerations regarding Article 109 of the *Satversme* and the obligation, following from it, to

ensure to persons the possibility to exercise their social rights at least in the minimum amount.

Taking into account the arguments presented by the Ombudsman and other materials in the case, it can be concluded that the basic issue in the case is, whether the GMI level set in the contested norm complies with human dignity and the principle of a socially responsible state.

Hence, in the present case, the Constitutional Court will, first and foremost, review the compliance of the contested norm with Article 1 of the *Satversme* in interconnection with Article 109 of the *Satversme*, afterwards examining its compliance with the second sentence of Article 91 of the *Satversme*.

17.1. Article 1 of the *Satversme* provides: "Latvia is an independent democratic republic."

Human dignity is the constitutional value of Latvia as an independent and democratic state governed by the rule of law. The value of each individual is the essence of fundamental rights. Human dignity characterises a human being as the supreme value of a democratic state governed by the rule of law. It must be safeguarded both in the relationship between the State and the human being and in personal relationships of people. In a democratic state governed by the rule of law, both the legislator, in adopting legal norms, and the parties applying the legal norms must respect human dignity (*see Judgement of 19 December 2017 by the Constitutional Court in Case No. 2017-02-03, Para 9.1., and Judgement of 5 March 2019 in Case No. 2018-08-03, Para 11*).

It is provided in the fourth paragraph in the Preamble to the *Satversme* that Latvia as a democratic, socially responsible state governed by the rule of law is based on human dignity. The principle of a socially responsible state is a principle that has been derived from the basic norm of a democratic state governed by the rule of law, which falls within the scope of Article 1 of the *Satversme*.

Human dignity as a fundamental right is unconditionally vested in each person. The State' s obligation to ensure a just social order, levelling out the most significant social differences in society, fostering social inclusion and ensuring to each group of inhabitants the possibility to lead a life that is worthy of human dignity follows from the principle of a socially responsible state, based on human dignity (*compare, see Judgement of 2 November 2006 by the Constitutional Court in Case No. 2006-07-01, Para 18*).

In the long-term, social inequality may significantly reduce the economic potential and opportunities of growth of persons, therefore the decreasing of socioeconomic inequality and risks of poverty is important also from the perspective of national sustainability (*see: Latvijas ilgtspējīgas attīstības stratēģija līdz 2030. gadam, 24. lpp.*). Sustainability is one of the constitutional principles aimed at safeguarding the aims and values, include in the *Satversme*, as well as at the implementation thereof (*see Judgement of 6 October 2017 by the Constitutional Court in Case No. 2016-24-03, Para 11*). Such integrated and balanced development of social welfare and economy provides for the current social and economic needs of inhabitants without jeopardising the possibilities for providing for the needs of the future generations (*compare, see Judgement of 18 October 2018 by the Constitutional Court in Case No. 2018-04-01, Para 16*). It is stated in the fifth paragraph of the Preamble to the *Satversme* that each individual takes care of oneself and one's relatives. This means that, primarily, it is the person's own responsibility – to ensure to oneself life that is worthy of human dignity and the State cares for the person only the person is unable to do so. The State cannot assume full responsibility for a person's social and economic needs (*compare, see Judgement of 11 December 2006 by the Constitutional Court in Case No. 2006-10-03, Para 13.3.*). This element is also essential from the perspective of sustainable national development.

Hence, the legislator's obligation to create such social security that is aimed at the protection of human dignity as the supreme value of a democratic state governed by the rule of law, levelling out social inequality and sustainable national development follows from the principle of a socially responsible state, based on human dignity.

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

The right to social security, falling within the scope of Article 109 of the *Satversme*, is one of the elements in the content of the principle of a socially responsible state. The aim of this right is to ensure, insofar possible, social justice and to ensure to everyone the possibility to lead a life worthy of human dignity (*compare, see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 14, and Judgement of 13 February 2013 in Case No. 2012-12-01, Para 8.2.*). Article 109 of the *Satversme* guarantees to inhabitants the right to stable and foreseeable, as well as effective, fair and

sustainable social security (*compare, see Judgement of 19 December 2011 by the Constitutional Court in Case No. 2011-03-01. Para 15.2.*).

In specifying the concept of social security, included in Article 109 of the *Satversme*, the Constitutional Court has noted that it should be understood as various measures of social security, *inter alia,* also social assistance (*compare, see Judgement of 26 March 2004 by the Constitutional Court in Case No. 2003-22-01, Para 7*). Para 17 of Section 1 of the Social Assistance Law provides that social assistance is a benefit in cash or in kind, which is granted on the basis of assessing the material resources of a person living separately or of a family, who lacks resources for providing for the basic needs.

In clarifying the content of fundamental rights established in the *Satversme*, Latvia's international commitments in the area of human rights should also be taken into account. Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. Whereas Article 25 of the Declaration sets out that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services. Article 11 of the International Covenant of Economic, Social and Cultural Rights provides that everyone has the right to an adequate standard of living for himself and his family.

The European Union Charter of Fundamental Rights is binding upon Latvia. Article 1 of this legal act of the European Union provides that human dignity is inviolable. It must be respected and protected. In accordance with the third part of Article 34 of the European Union Charter of Fundamental Rights, in combatting social exclusion and poverty, the European Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by the European Union law and the national laws and practices.

In the area of social rights, also the provisions of the Revised European Social Charter, which was ratified by the law of 14 February 2013 "On the Revised European Social Charter", are binding upon Latvia. By this law, Latvia recognises as binding upon it, *inter alia*, Article 13 of the Charter, which provides: the State undertakes to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, is granted adequate assistance. Article 13 of the Revised European Social Charter

guarantees to a person the right to social assistance. The main criterion for granting it is the individual need and the fact that the person lacks adequate resources (*see Decision of 9 September 2014 by the European Committee of Social Rights in case "Finnish Society for Social Rights v. Finland", Application No. 88/2013, Para 110*).

Hence, the concept of social security, falling within the scope of Article 109 of the Satversme, should be understood also as such measures that are not linked to social insurance and making of contributions but which the State grants to the person to provide to him or her the social assistance he or she needs.

17.3. The Constitutional Court has already recognised that, irrespectively of the economic situation, the State retains a certain set of basic duties that it has no right to derogate from. One of such basic obligations is the State's duty, included in Article 1 and Article 109 of the *Satversme*, to implement measures that would allow a person to exercise his or her right to social security and lead a life worthy of human dignity (*compare, see Judgement of 21 June 2012 by the Constitutional Court in Case No. 2011-20-01, Para 14*).

Para 11 of Section 1 of the Social Assistance Law provides that social assistance is provided for satisfying such basic needs of a person as food, clothing, housing, health care, compulsory education. This is to be regarded as the minimum that everyone needs.

At the same time, the social assistance measures should ensure the possibility to an individual to retain the status of a full-fledged member of society (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1.3. of the Findings*). The obligation to ensure the minimum social assistance to a person should be understood as providing such assistance to a person that would allow him or her to lead a life worthy of human dignity and adequately provide for one's basic needs (*see: Digest of the Case Law of the European Committee of Social Rights, 31 December 2018, p. 144*). To ensure a life worthy of human dignity, it is not enough to guarantee only the resources needed for subsistence. Also the Federal Constitutional Court of Germany has recognised that social assistance to persons should ensure at least on the minimum level participation in social, political and cultural life. The State must ensure to a person an adequate status of a member of society (*see Judgement of 5 November 2019 by the Federal Constitutional Court of Germany in Case BvL 7/16, Rn. 119*). At the court hearing, this opinion was upheld also by Jānis Lazdiņš, who explained that the subsistence minimum should ensure not only

physical survival of a person but at least minimum involvement in social life, the possibility to satisfy cultural needs, as well as the possibility to participate in the political life of the state (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, pp. 98 –99*).

Thus, so that everyone could lead a life worthy of human dignity, the social assistance minimum should be such that would allow everyone to ensure for oneself food, clothing, housing and medical assistance – everything that is needed to guarantee elementary subsistence to every person, as well as to ensure to every person the possibility to exercise one's right to basic education. Moreover, social assistance should also guarantee to a person the possibilities to participate in the social, political and cultural life, thus, ensuring to every person the status of a full-fledged member of society.

17.4. The requirement, included in Article 1 and Article 109 of the *Satversme*, to ensure that a person could lead a life worthy of human dignity is the State's positive obligation. Thus, to examine in the present case, whether the State has fulfilled this obligation, it must be verified, whether:

1) the legislator has introduced measures to ensure to persons the possibility to exercise their social rights;

2) these measures have been duly implemented, i.e., whether persons have been ensured the possibility to exercise their social rights at least in the minimum scope;

3) general legal principles have been abided by (*compare, see Judgement of 19 December 2007 by the Constitutional Court in Case No. 2007-13-03, Para 8.4., and Judgement of 15 June 2017 in Case No 2016-11-01, Para 14*).

18. In verifying, whether the legislator has introduced measures to ensure to persons the possibility to exercise their social rights, the Constitutional Court must establish, whether the State has introduced measures allowing needy persons to exercise their right to social security.

18.1. The GMI level set in the contested norm is the lowest level of minimum income or resources, defined in legal acts, that allows a person, who has been recognised as being needy, to apply for a certain type of social assistance (*see: Koncepcija „Par minimālā ienākuma līmeņa noteikšanu" (informatīvā daļa), Rīga, 2014, 15. lpp.*).

Section 35 (1) of the Social Assistance Law defines the benefit for ensuring the GMI level as one of the types of social assistance. Pursuant to Para 10 of

Section 1 of this law, this benefit is a benefit in cash and kind or a benefit in cash or kind, which is granted to families or separately living persons who, due to objective circumstances, do not gain sufficient income and who are recognised to be needy. This benefit ensures the GMI level for each family member. Thus, the benefit for ensuring this level is a social assistance benefit for those persons, who have no income at all or whose income is very low.

Pursuant to Para 4 of the Cabinet Regulation of 17 June 2009 No. 550 "Procedures for the Calculation, Granting, Disbursement of the Benefit for Ensuring the Guaranteed Minimum Income Level and the Entering into an Agreement Regarding Participation" (hereafter – Regulation No. 550), the benefit for ensuring the GMI level is calculated as the difference between the GMI level, defined in the contested norm, for each family member, and the total income of the needy family or person.

Pursuant to Para 3 of Regulation No. 913, the local government council has the right to set for certain groups of inhabitants (for example, children, recipients of old-age and disability pensions) another GMI level, which is not lower than the GMI level defined in the contested norm and does not exceed the income level, defined in the Cabinet Regulation of 30 March 2010 No. 299 "Regulations Regarding the Recognition of a Family or Person Living Separately as Needy" (hereafter – Regulation No. 299), for recognising a family or a person living separately as being needy, i.e., 128.06 euro. In such a case, in calculating the amount of the benefit for ensuring the GMI level to be disbursed to a person, the GMI level defined by the local government is taken into account. The Cabinet notes that, in 2018, the right to set a higher GMI level was exercised by 27 local governments or 22.7 per cent of all local governments (*see Case Materials, Vol. 1, p. 55*).

The benefit for ensuring the GMI level, on the basis of the person's application, is calculated, granted and disbursed by the social service of that local government, in whose territory the person has declared his or her place of residence. The recipient of the benefit and the social worker agree on the way the benefit will be disbursed on case-by-case basis, and this benefit is disbursed for the period, during which the family or the person living separately has been granted the status of a needy family or person. Moreover, upon granting the benefit for ensuring the GMI level, an agreement is concluded with the recipient of the benefit regarding participation, imposing various obligations on the

persons to improve their social situation (*see Para 3, Para 10 and Para 14 of Regulation No. 550*).

Thus, the contested norm has been adopted so that persons could exercise their right to social security. Its aim is to provide support to needy persons who lack adequate resources and who are unable to ensure these resources by their own effort.

18.2. The Cabinet and the summoned persons – the *Saeima* and the Ministry of Welfare note that the support for inhabitants with very low income should be examined as a complex set of measures because, in addition to the benefit for ensuring the GMI level, needy persons receive also other support in the framework of social security measures (*see Case Materials, Vol. 1, p. 64 and Vol. 2, p. 70 and p. 135*).

The legislator has the obligation to specify the content of social rights, included in Article 109 of the *Satversme*, in laws, and these laws become part of the state social security (*compare, see Judgement of 1 December 2010 by the Constitutional Court in Case No. 2010-21-01, Para 15*). To allow a person to exercise his or her right to social security, the legislator has envisaged in various regulatory enactments measures aimed at establishing the system of social security, defined in the law "On Social Security". This system comprises social insurance, state social benefits, as well as social assistance benefits and social services.

Pursuant to Section 3 (1) of the law "On State Social Insurance", within the framework of the social insurance system, a person is disbursed social insurance benefits and old-age pensions, the aim of which is to ensure to a person replacement income upon retiring, losing one's job, becoming disabled, losing the provider, in the case of sickness, taking the maternity or child-care leave, suffering an accident at work or contracting an occupational disease. In Article 4 of the law "On State Social Insurance", the legislator has envisaged several types of social insurance: State pension insurance, social insurance in case of unemployment, social insurance in respect of accidents at work and occupational disease, disability insurance, maternity, paternity and sickness insurance, parents' insurance, and health insurance.

The state social benefits are one of the elements in the system of social security. Pursuant to Section 2 of the law "On State Social Allowances", these provide support in the form of money payments received by persons belonging to certain groups of inhabitants in situations when additional expenditures are

necessary or when these persons cannot obtain income. This law defines 11 social allowances, disbursed regularly: State family allowance, childcare benefit, guardian's allowance for a dependent child, remuneration for the fulfilment of a guardian's duties, remuneration for the fulfilment of a foster family's duties, an allowance for the compensation of transport expenses for disabled persons with impaired mobility, State social security benefit, remuneration for the care of an adopted child, benefit for caring for a disabled child, an allowance for a disabled person in need of care, and a benefit for the adoption of a child. Likewise, in Section 3 (2) of the law "On State Social Allowances, the legislator has envisaged three allowances to be disbursed once: childbirth allowance, funeral benefit, and remuneration for adoption. Several types of State social allowances are envisaged in other regulatory enactments, for example, "Disability Law" defines the allowance for using an assistant to persons with Group I visual disability.

The system of social assistance is constituted by social assistance benefits and social services. Pursuant to Section 35 of the Social Assistance Law, a local government disburses from its budget the benefit for ensuring the GMI level, the housing benefit and a benefit in a situation of crisis. In difference to the benefit for ensuring the GMI level, the amount of which is linked to the GMI level set in the state, the amount of housing benefit and the conditions for disbursing it are regulated by the local government's binding regulation (*see Section 35 (5) of the Social Assistance Law*). The benefit in a situation of crisis, in turn, ais disbursed by a local government, without assessing the person's income when due to a disaster or other circumstances beyond the family's or the person's control, the family or the person can no longer provide for its basic needs by its own effort and needs psychosocial or material assistance (*see Para 39 of Section 1 and Section 35 (2) of the Social Assistance Law).*

In Section 35 (3) of the Social Assistance Law, the legislator has envisaged a local government's right to disburse from its budget resources also other benefits to needy persons or families. The Cabinet notes that, in addition to the benefit for ensuring the GMI level and the housing benefit, local governments have envisaged in their binding regulations, for example, a benefit for purchasing school supplies for children from needy families, a benefit to support the acquisition of education, a benefit for clothing and footwear for children from needy families, a benefit for covering the costs of health care services, as well as other support measures (*see Case Materials, Vol. 1, p. 58 and p. 59*).

Pursuant to Section 13 of the law "On Social Security", social services also belong to the system of social assistance intended for needy persons. These are measures in the form or services to facilitate more comprehensive realisation of person's social rights. Pursuant to Para 20 and Para 23 of Section 1 of the Social Assistance Law, social services are, for example, the services of social care and social rehabilitation.

In examining, whether measures have been implemented to allow needy persons realise their right to social security, it also should be taken into account that the legislator has established in legal acts reliefs un various areas for needy families or persons living separately. For example, legal aid is provided to needy persons free of charge, the electricity costs are decreased, discount on the immovable property tax in the amount of 90 per cent, release from making the patient's co-payment at institutions of health care, full reimbursement of the costs of medicines or medical devices, as well as decreased cost for visiting the State's cultural institutions (*see: Atvieglojumi un palīdzība trūcīgām un maznodrošinātām ģimenēm (personām), available: www.lm.gov.lv*).

To facilitate the employment of groups of persons under the risk of exclusion, *inter alia*, needy persons, the legislator has adopted the Social Enterprise law, the purpose of which is to create favourable business environment for social enterprises (*see Section 1 of the Social Enterprise Law , and Sub-para 2.3. of the Cabinet Regulation of 27 March 2018 No. 173 "Regulations Regarding the Population Groups at Risk of Social Exclusion and Procedures for Granting, Registering and Supervision of the Status of a Social Enterprise").* Likewise, to promote activities for the public good and increasing the social welfare of needy persons, the legislator has adopted the Public Benefit Organisation Law (*see Section 1 and Section 2 of the Public Benefit Organisation Law).*

18.3. In view of the points made in this paragraph, the Constitutional Court concluded that the legislator has implemented measures to establish the system of social security, thus ensuring to persons the possibility to exercise the right to social security. Social assistance is one of the elements in the social security system, its aim is to provide support to needy persons and it comprises also the GMI level, set in the contested norms, and the benefit related to it, which is disbursed to needy persons to ensure this level.

Thus, the legislator has introduced measures to establish a system of social security that would ensure to a needy person the possibility to exercise their social rights.

19. In verifying, whether the measures that had been introduced to realize the social rights of a needy person have been introduced duly, the Constitutional Court must establish whether such persons have been ensured the possibility to exercise their social rights at least in the minimum amount.

19.1. The *Satversme* does not envisage a person's right to a particular amount of benefit. However, a socially responsible state, based on human dignity, has the obligation to establish such a system of social security that is aimed at the protection of human dignity, levelling out social inequality and sustainable national development, moreover, not only in the formal meaning of it but also by ensuring effective functioning of this support system.

In a democratic state governed by the rule of law, it is the legislator's obligation to establish such a system, as well as to regulate the most important issues related to defining the minimum of social assistance. The Constitutional Court has recognised that the legislator must decide in the legislative process the most important issues, authorising the Cabinet or another state institution to draft more detailed rules and the technical norms needed to implement the law in life (*see, for example, Judgement of 21 November 2005 by the Constitutional Court in Case No. 2005-03-0306, Para 7, and Judgement of 21 February 2018 in Case No. 2017-11-03, Para 14.1*.).

19.2. To achieve this aim, the State must choose from among various methods and select the criteria, according to which this minimum is set.

Although the selection of the most appropriate method is a matter of political choice, nevertheless, in defining the minimum of social assistance, the State must act within the framework of the principle of socially responsible state and the principle of a sustainable state (*compare, see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 31.2*.). I.e., the State has the obligation to establish a method that would ensure that needy persons receive the social assistance they require in at least the minimum amount. Moreover, the chosen method should also envisage the possibility to facilitate sustainable national development, ensuring a reasonable balance between the development needs of an individual person and of the society in general.

Consequently, the chosen method should be such that would make this minimum amount dependable on economic indicators, thus, reflecting the social reality and the actual economic situation in the state. Edvards Kušners, the representative of the summoned person – the Bank of Latvia, noted at the court hearing that two methods could be used to set the minimum of social assistance – the absolute and the relative method. In the case of applying the absolute method, the concrete costs of each basic need that this minimum should provide for are determined. However, the inhabitants' needs change, therefore these costs need to be reviewed regularly. Whereas in the case of applying the relative method, the minimum of social assistance is determined as a constant share of the median income at the households' disposal or of the households' average income. The Bank of Latvia and several other summoned persons consider this method to be the most suitable for setting the minimum of social assistance because it ensures that, with the economic situation in the country changing, this minimum also changes. The relative method allows setting the level which conforms with economic reality in the state at the particular moment (*see Transcript of the court hearing of 19 and 20 May 2020, Case Materials, Vol. 3, p. 108 and p. 112, Vol. 4, p. 23 and p. 82).* The majority of the European Union states use this method to set the minimum income level, using the threshold for the risk of poverty as the point of reference (*see: Koncepcija (informatīvā daļa), Rīga, 2014, 34. un 35. lpp.*).

The Constitutional Court already has recognised that the State has the obligation to review regularly the sufficiency of the amount of social assistance provided to guarantee that it conforms with the social reality and that the required assistance is provided to needy persons. Hence, the State has the obligation to review the amount of social assistance regularly (*compare, see Judgement of 26 November 2009 by the Constitutional Court in Case No. 2009-08-01, Para 15*). This obligation can be fulfilled if a method has been developed and criteria set for defining the minimum of social assistance.

19.3. The legislator, in exercising its competence in creating and implementing social policy, as well as defining the scope of social rights, has the obligation to specify in laws the content of social rights included in the *Satversme* (*compare, see Judgement of 21 December 2009 in Case No. 2009-43-01, Para 24, and Judgement of 18 February 2011 in Case No. 2010-29-01, Para 14).* Thus, the legislator has the obligation to introduce measures required for the protection of human dignity. To this end, the legislator has the right to choose

various solutions, *inter alia*, provide that assistance to needy persons will be provided in the framework of several measures belonging to the system of social security. However, the State's actions, in implementing the measures necessary for ensuring social assistance, must comply with the principles of a socially responsible and sustainable state, based on human dignity.

Hence, if the rights of needy persons to social security have been specified in law, defining by the contested norm the GMI level, then this level, in interconnection with other measures of the social security system that are implemented in the state, should be such as to ensure that every needy person would be provided life worthy of human dignity.

19.4. To assess, whether needy persons have been ensured the possibility to exercise their social rights at least in the minimum amount, the Constitutional Court must establish:

1) whether the legislator itself has regulated the most important issues related to the GMI level;

2) whether the GMI level has been defined on the basis of a method that follows from the aim to protect human dignity, to level out social inequality and ensure sustainable national development;

3) whether the GMI level, defined in the contested norm, in interconnection with other measures of social security system, ensures to every needy person the possibility to lead a life worthy of human dignity.

20. In adopting the law "On Social Security" and the Social Assistance Law, the legislator has provided that a person, who is unable to provide for oneself by one's own effort or to overcome particular difficulties in life and who does not receive sufficient assistance from anyone else, has the right to personal and material assistance that complies with its needs, provides the possibility of self-help and promotes his or her participation in social life. The aim of social assistance is to provide material assistance to, *inter alia*, needy families or persons living separately, to provide for their basic needs and facilitate the involvement of persons capable of work in improving their own situation (*see Section 11 of the law "On Social Security" and Section 32 of the Social Assistance Law*).

Section 35 (1) of the Social Assistance Law provides that a separate benefit is disbursed to ensure the GMI level and it is disbursed by local governments from the resources of their basic budget. The aim of this benefit is to ensure the

GMI level for each family member (*see Para 10 of Section 1 of the Social Assistance Law*). Section 36 (1) of the Social Assistance Law, in turn, comprises the legislator's authorisation to the Cabinet to set the GIM level and review it annually in connection with the draft annual state budget law.

Hence, with the purpose of ensuring support for needy persons, the legislator has authorised the Cabinet to set the GMI level and to review it annually. It also follows from Section 36 (1) of the Social Assistance Law that the setting of this level is closely linked to the expenditure envisaged in the annual state budget and the planning thereof. Thus, the legislator has at its disposal information about the resources allocated to local governments for the fulfilment of their obligations. To ensure effective and rational use of the budget resources, the aim of disbursing the benefit for ensuring the GMI level should be clearly defined in regulatory enactments. However, neither the Social Assistance Law nor other regulatory enactments define the criteria for implementing the authorising norm. I.e., concrete basic needs, for the provision of which the legislator has envisaged the support exactly in the form of the benefit for ensuring the GMI level, have not been defined. Due to this reason, at the court hearing, the participants in the case and the summoned persons expressed different opinions regarding the purpose of disbursing the benefit for ensuring the GMI level. Jānis Priekulis, the *Saeima's* representative, noted that the aim of social assistance was to provide for, insofar possible, such basic needs of a needy person as food, clothing, housing, and health care. Likewise, every person should be ensured the possibility to exercise his or her right to basic education. In the social reality, many of these basic needs, allegedly, are provided for not by the benefit for ensuring the GMI level but by other support measures. The Cabinet's representative Elīna Celmiņa also explained that, with the existence of other measures of social security system, the social assistance benefits, *inter alia*, the benefit for ensuring the GMI level, are mainly to be used to cover the basic needs of a needy person of food (*see Transcript of the court hearing of 19, 20 and 26 May 2020., Case Materials, Vol. 3, p. 88, Vol. 4., p. 8 and p. 121*). Moreover, the legislator, by authorising the Cabinet to set the GMI level and to review it annually, has not defined the basic principles of the method that the Cabinet should follow in setting the GMI level.

The Constitutional Court has already recognised that establishing the procedure for realising fundamental rights and setting the minimum guarantees for the protection of human rights is an important matter of public life. Decisions

that are important for the protection, respect or realisation of fundamental rights, should be made by the legislator itself (*compare, see Judgement of 20 December 2010 by the Constitutional Court in Case No. 2010-44-01, Para 11*).

Setting of the GMI level is an issue that is related to the State's obligation to establish such a system of social security that ensures protection of human dignity, levelling out of socioeconomic differences and sustainable national development. Moreover, as noted above, the GMI level is the lowest level of minimum income or resources, defined in legal acts, that allows a person, who has been recognised as being needy, to apply for a certain kind of social assistance. Consequently, it should be deemed to be the lowest point of reference that is used in Latvia in envisaging social support measures for decreasing poverty and social inequality. Hence, defining the aim of the benefit for ensuring the GMI level as well defining the basic principles of the method for setting the GMI level are issues of such importance that they should be decided on by the legislator itself.

Hence, the legislator has not decided on the most important issues related to the setting of the GMI level.

21. At the court hearing, the Ombudsman noted that the GMI level set in the contested norm was not sufficient so that every needy person could lead a life worthy of human dignity. The GMI level is not set on the basis of a certain method but as the result of a political agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, p. 19*).

The Cabinet's authorised representative Elīna Celmiņa, in turn, admitted at the court hearing that currently the GMI level was determined through an agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments, however, this procedure was said to not be contrary to the *Satversme*. Moreover, it should be taken into account that the government has developed a method for setting the GMI level, thus proving the need to improve this procedure (*see Transcript of the court hearing of 19 May 202, Case Materials Vol. 3, p. 55*).

21.1. It has been concluded in the informative report of the Ministry of Welfare of 2013 "Proposals for Improving the Social Security System" that the thresholds of poverty or minimum income, *inter alia*, the GMI level, set in regulatory enactments, are not substantiated and are not linked to the

socioeconomic indicators that characterise the inhabitants' situation. In difference to Latvia, in many other Members States of the European Union, the schemes of minimum security, which are similar to the GMI level, are created on the basis of poverty threshold or other standards of minimum subsistence, which are updated in accordance with the increase of salary for work or consumer prices (*see Labklājības ministrijas 2013. gada informatīvā ziņojuma „Priekšlikumi sociālās drošības sistēmas pilnveidošanai" 13. lpp.*).

To set methodologically substantiated thresholds of minimum income that would conform with the socioeconomic situation, the Cabinet approved the Concept Paper by its Order of 30 October 2014 No. 619 "On Setting the Minimum Income Level". It is noted therein that the minimum income levels, *inter alia*, the GMI level, have not been determined on the basis of a concrete method of calculation but by taking into account the financial possibilities of the state and local governments at the particular moment. Moreover, a clear procedure for indexing these levels has not been established. Due to the absence of a method for setting the levels of minimum income, it is impossible to provide arguments regarding their validity Within the framework of the social assistance system, the social payments of neither the state nor local governments are sufficiently targeted to eliminate the risk of poverty for needy inhabitants and decrease the depth of poverty. The Concept Paper envisages setting a methodologically substantiated level of minimum income that would conform with the socioeconomic situation and would serve as a point of reference in granting support, defined within the framework of the state and local government social assistance system, to inhabitants with the lowest income. One of the proposed solutions is to set the minimum income level in the amount of 40 per cent of the median income at households' disposal, which has been re-calculated with respect to the equivalent consumer, applying the equivalence scale. Additionally, it is offered to develop a new basket of consumer goods and services of full subsistence minimum for various types of households in accordance with the territorial division (*see Koncepcijas kopsavilkuma 3. un 6. lpp.*).

However, the plan for implementing the Concept Paper was approved only almost five years later by the Cabinet's order of 22 August 2019 No. 408 "Plan for Improving the System of Minimum Income Support for 2020-2021". It envisages, *inter alia*, gradual improvement of the minimum income support system, reviewing the GMI level and, from 2021, setting it in the amount of 50

per cent of a needy person's income threshold for the first person in the household and setting for the other members of the household the coefficient of 0.7 of the household's first person. It is planned to set the threshold of a needy person's income, in turn, in the amount of 40 per cent of the income median at the households' disposal for one equivalent consumer for the first person in the household and applying the coefficient of 0.7 to other persons in the household (*see Plāna minimālo ienākumu atbalsta sistēmas pilnveidošanai 2020.–2021. gadam 1. tabulu*).

Thus, the Constitutional Court finds that the government had been aware already since 2013 of the need to have a concrete method for calculating the GMI level, otherwise its conformity cannot be verified. However, the setting of the GMI level on the basis of a concrete method is planned only since 2021.

21.2. The benefit for ensuring the GMI level is disbursed from the resources of a local government's basic budget. Therefore, pursuant to the Cabinet Regulation of 6 July 2004 No. 585 "Procedures by which the Cabinet shall Co-ordinate with Local Government Issues that Affect the Interests of Local Governments", the GMI level is reviewed through an agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments.

The Cabinet admits that the GMI level is not determined on the basis of concrete calculations or socioeconomic indicator, but as the result of an agreement between the Ministry of Welfare and the Latvian Association of Local and Regional Governments. I.e., it is an amount defined as the result of a compromise, unrelated to any value characterising the income and expenditure of a household and unsubstantiated by any methodological calculation (*see, Case Materials, Vol. 2, p. 58).* The Ministry of Welfare notes that it had, having analysed various data, offered to increase the GMI level every year. However, the Latvian Association of Local and Regional Governments had objected to increasing the GMI level, pointing to the limited financial possibilities of some local governments as well as arguing that the state's co-financing was necessary for increasing the GMI level (*see Case Materials, Vol. 2, p. 68*). The Latvian Association of Local and Regional Governments holds that a GMI level, conforming with the social reality had been set because local governments had been imposed the obligation to disburse the benefit for ensuring this level from the resources of their basic budgets (*see Case Materials, Vol. 2, p. 83).*

The benefit for ensuring the GMI level is one of the social assistance benefits, defined in Section 35 of the Social Assistance Law, which are disbursed from the resources of the local government budget. Hence, the benefit for ensuring the GMI level is a social assistance benefit, established by the State and, thus, the State, first and foremost, is said to be responsible for its compliance with the *Satversme*. Since the legislator has envisaged in Section 35 (1) of the Social Assistance Law that this benefit is paid from the local government budget resources, in accordance with the subsidiarity principle, a local government has the discretion to adapt the fulfilment of the obligation, set for it in law, to the circumstances existing in the particular administrative territory. However, in accordance with Section 3 (1) of the law "On Local Governments", a local government, in fulfilling the tasks set by the Cabinet, must take into account the needs of its inhabitants. Thus, in realising social rights, the local government also has the duty to ensure that every needy person can lead a life worthy of human dignity. The Constitutional Court notes: although the financial possibilities of the State and local governments influence the realisation of social rights, the State, nevertheless, has the obligation to ensure that every person receives the social assistance that he or she needs at least in the minimum amount (*compare, see Judgement of 2 November 2006 by the Constitutional Court in Case No. 2006-07-01, Para 13.5.*). Therefore, the financial possibilities of local governments cannot serve as the only criterion, in deciding on the issue of the GMI level, taking into account, in particular, the fact that the setting of this level follows from the aim of protecting human dignity and level out social inequality.

The Cabinet's obligation, in exercising the authority granted by the legislator, to set the GMI level in accordance with a valid and reasoned method follows from the principle of a socially responsible state, based on human dignity, since this is the only way that allows ascertaining that the set level serves for the protection of human dignity, levelling out of social inequality and sustainable national development. Whether the benefit for ensuring the GMI level should be disbursed from the budget resources of the State or the local government, is a matter of the national social policy; however, the legislator may not prohibit from setting a GMI level that would comply with the *Satversme*. The Federal Constitutional Court of Germany also has concluded that, in setting the subsistence minimum, the State must base its choice on constitutionally valid considerations and evidence-based methodology. Setting of the subsistence minimum without substantiation is contrary to human dignity and the principle of

a socially responsible state (*compare: Judgement of 9 February 2009 by the Federal Constitutional Court of Germany in Case BvL 1-3, 4/09 Rn. 167.–172.*).

21.3. It is noted in the initial impact assessment report of the draft Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income Level" that the grounds for setting the GMI level in the amount defined in the contested norm is the agreement reached on 15 May 2019 between the Ministry of Welfare and the Latvian Association of Local and Regional Governments. Pursuant to the minutes of negotiations, the GMI level constitutes approximately 50 per cent of the income level of a needy person, i.e., of 128.06 euro. The Ministry of Welfare had offered to set the GMI level in the amount of 15 per cent of the median income or 74 euro. However, the Latvian Association of Local and Regional Governments did not support this proposal (*see Ministru kabineta noteikumu projekta „Grozījums Ministru kabineta 2012. gada 18. decembra noteikumos Nr. 913 „Noteikumi par garantēto minimālo ienākumu līmeni"" anotāciju and Labklājības ministrijas un Latvijas Pašvaldību savienības 2019. maija 15. maija sarunu protokolu*).

It cannot be concluded from the preparatory materials of the contested norm why the GMI level is set in the amount defined in the contested norm. Also, the representative of the summoned person – the Ministry of Welfare – admitted at the court hearing that the GMI level was not substantiated since it was the outcome of a political agreement (*see Transcript of the court hearing of 20 May 2020, Case Materials, Vol. 4, p. 24*). The Constitutional Court concludes that, prior to adopting the contested norm, the Cabinet did not have at its disposal a valid and reasoned method for setting the GMI level. Therefore, the Cabinet could not have ascertained, whether the GMI level, in interconnection with other measures of the social security system, was such that would allow needy persons to lead a life worthy of human dignity. Local governments are also responsible for the fulfilment of this obligation, as they have to perform the tasks set by the Cabinet by taking into account the lawful interests of the State and the inhabitants of the respective administrative territory. The procedure for adopting the contested norm is contrary to the principle of a socially responsible state, based on human dignity.

Consequently, the GMI level has not been set on the basis of a method that would follow from the aim to protect human dignity, level out social inequality and ensure sustainable national development.

22. At the court hearing, representatives of the Cabinet, the *Saeima* and the Ministry of Welfare noted that the contested norm and the benefit for ensuring the GMI level, closely related to it, was only one of the measures within the framework of the state social security system. Therefore, in assessing whether the possibility to exercise their social rights at least in minimum scope had been ensured to needy persons, the whole social security system should be examined in its entirety (*see Transcript of the court hearing of 19 and 20 May 2020, Case Materials, Vol. 3, pp. 47–48, p. 78 and Vol. 4, p. 11*).

The Ombudsman, analysing only the social security benefits, in turn, notes: although the local government support for providing for the basic needs is available to needy persons, it, nevertheless, is not sufficient to cover a person's all costs relating to maintenance of housing, health care, clothes, as well as exercising the right to basic education. The benefit for ensuring the GMI level, closely connected to the contested norm, is to be used not only to provide for the basic need for food but also for other basic needs (*see Case Materials, Vol. 1, pp. 8–12*).

22.1. As noted above, the legislator has provided that Latvia's social security system is comprised of social insurance, state social benefits, as well as social assistance benefits and social services.

Pursuant to Para 2 of Section 5 (3) of the Social Assistance Law, in calculating the benefit for ensuring the GMI level, certain state social benefits, as well as social assistance benefits are not considered to be income. Likewise, pursuant to Para 14 of Regulation No. 299, the measures of social security system and support for an orphan or a child left without parental care after the out-of-family care has ended are not considered as being income.

This means that, in addition to the benefit for ensuring the GMI level, a needy person may receive only the state social benefits and social assistance benefits, defined in the aforementioned norm of the law, as well as other support measures referred to in Para 14 of Regulation No. 299. Income gained in the framework of social insurance as well as the state social benefits that are not mentioned in Para 2 of section 5 (3) of the Social Assistance Law are taken into account in calculating the benefit for ensuring the GMI level, therefore, they cannot be assessed as additional measures of social support for needy persons, who receive the benefit for ensuring the GMI level.

Consequently, the Constitutional Court will examine only the measures of social security system, *inter alia*, social services as well as other support

measures referred to in Para 2 of Section 5 (3) of the Social Assistance Law and in Regulation No. 299.

22.2. As mentioned above, in calculating the benefit for ensuring the GMI level, several benefits, which are defined in the "Law on State Social Allowances", are not considered as being income, i.e.: the state family benefit and surplus payment to this benefit, the benefit for caring for a disabled child; the childbirth benefit; the benefit for compensating for transport costs for a disabled person with impaired mobility; a benefit to a disabled person who needs care, and the funeral benefit. Likewise, a person has the right to receive the benefits, established by other regulatory enactments, for example, the benefit for using an assistant and the benefit for a child with the celiac disease. Moreover, it follows from Para 14 of Regulation No. 299 that, in addition to the benefit for ensuring the GMI level, a needy person's income comprises also the social assistance benefits, previously disbursed by a local government, and the social guarantees to an orphan or a child left without parental care after the out-of-family care ends, as well as monetary resources obtained from charitable foundations, the study credit as well as material benefits gained as the result of social campaigns.

The Constitutional Court finds that these measures of social security system, as well as other support measures have a concrete aim and these are disbursed to persons belonging to particular groups of inhabitants. For example, pursuant to Section 2 and Section 5 of "Law on State Social Allowances", the aim of the state family benefit is to provide regular support to families who are incurring additional expenditure due to raising a child. The aim of the benefit for caring for a disabled child, in turn, is to provide special assistance to a disabled child (*see Section 7^1 of "Law on State Social Allowances"*). Hence, these measures of social security system and other support measures should not be assessed as such that should primarily be used to provide for the basic needs of a needy person or his or her family.

22.3. Pursuant to Section 9 (1) of the Social Assistance Law, the local government, on the territory of which a person's place of residence has been declared, has the obligation to ensure to the person the possibility to receive social services and social assistance that meet his or her needs. Pursuant to Para 7 and Para 9 of Section 15 (1) of the law "On Local Governments", ensuring social assistance, as well as help in resolving housing matters is one of the autonomous functions of a local government,

In the first and the second part of Section 35 of the Social Assistance Law, the legislator has defined three social assistance benefits that are mandatory and that local governments disburse from the resources of their basic budget: the benefit for ensuring the GMI level, the housing benefit, and the assistance in a situation of crises. Pursuant to the third part of this section, if the reasoned application for the benefit for ensuring the GMI level by an inhabitant of the local government has been satisfied, the local government, upon assessing the income of the family or the person living separately, has the right to disburse from its basic budget also other benefits to provide for the basic needs of the family or the person.

22.3.1. It follows from the information provided by the Ministry of Welfare to the Constitutional Court that, in 2018, in addition to the benefit for ensuring the GMI level, the housing benefit constituted the largest share of the social assistance benefits disbursed by local governments to needy persons in total (*see Case Material, Vol. 2, p.112 and p. 113.*).

Although the Social Assistance Law defines the housing benefit as a mandatory benefit to be disbursed to needy persons, the matter of the procedure for disbursing it and its amount is within the local government's competence. This means that the method for calculating the benefit, its amount and the procedure for granting it are regulated differently in each local government. The Ministry of Welfare notes that the housing benefit is not granted each month in all local governments, therefore the amount of benefits received by needy persons differ. For example, in 2018, in Riga, the average amount of benefit for a needy person had been 60.14 euro per month, whereas in other local governments – 1–2 euro per month, on average. Moreover, although needy persons should have the possibility to receive the housing benefit, in some local governments the housing benefit was not disbursed in 2018. In other local governments, in turn, the housing benefit to a needy person for covering the rent and utility costs are disbursed each month but the benefit for purchasing heating fuel is disbursed once per year (*see Case Materials, Vol. 2, p. 110*). The fact that the amount of the housing benefit and the procedure for granting it are different in each local government was recognised also in the Initial Impact Assessment regarding the intended structural reforms in the area of social assistance policy. It was concluded therein that inhabitants, in solving issues related to housing costs, were in an unequal situation (*see: Sākotnējās ietekmes (ex-ante) novērtējums par iecerētajām strukturālajām reformām sociālās palīdzības politikas jomā (2014),*

SIA „KPMG Baltics". Gala ziņojums par optimālākajiem risinājuma variantiem sociālās palīdzības sistēmas izmaiņām un no pārējām sistēmām nepieciešamajiem atbalsta pasākumiem un piedāvāto variantu ietekmes uz valsts un pašvaldību budžetiem novērtējums, 7. lpp.).

The Constitutional Court finds: although support in the form of a housing benefit has been envisaged for needy persons, a person' s possibilities to receive this benefit, however, to a large extent depend on the local government, where the person has declared his or her place of residence. It cannot be ascertained that to every needy person, who, in addition to the benefit for ensuring the GMI level, has the right to receive a housing benefit, such support for covering the costs of housing is actually granted. Thus, until the legislator allows that support measures relating to housing issues are provided to needy persons, depending upon the social policy and financial possibilities of local governments, this benefit cannot be regarded as such that ensures to every needy person secured support in housing issues.

22.3.2. Pursuant to Section 35 (2) of the Social Assistance Law, a local government may grant a benefit to a family or a person in a situation of crisis, without assessing the income of the family or the person living separately.

Social assistance in a situation of crisis is a type of social assistance that is provided individually and in the short-term. It supplements the minimum of social assistance when an emergency situation has occurred for a needy person; i.e., due to a disaster or other circumstances beyond this person's control, he or she is unable to provide for the basic needs by one's own effort. However, this support is provided to the person until the moment when the emergency situation has ended. Hence, this type of social assistance benefit *per se* is not aimed at dealing with those conditions in a needy person's life that subject him or her to the risk of poverty. At the court hearing, Elīna Celmiņa, the Cabinet's representative, admitted that this benefit was disbursed to particular persons, who were in a situation of crisis, and, therefore, possibly, it should not be assessed as a support measure for needy persons to provide for their basic needs (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, p. 62*).

22.3.3. As ascertained above, local governments disburse to needy persons also other social assistance benefits – the benefit for purchasing school supplies, the benefit for clothes and footwear, for covering the costs of health care services, as well as other benefits.

However, the existence and the amount of these social assistance benefits differ in each local government and often depend on the limited possibilities of local governments to provide such support. The State Audi Office concluded already in 2014 that a targeted assessment of the social situation of inhabitants and their basic needs had not been performed in local governments in order to create an effective social assistance system. Predominantly, the social assistance systems of local governments are created in conformity with the financial possibilities of local governments (*see: Valsts kontroles revīzijas ziņojums. Pašvaldību sniegtās sociālās palīdzības tiesiskums un efektivitāte, Rīga, 2014, 5. un 6. lpp.*). It was concluded also in the State Audit Office's audit report of 2020 that different approach to defining the types of benefits , their number and the circle of recipients continued to exist in local governments. The resources intended for social assistance, used by local governments, not always target the groups of inhabitants subject to the risk of poverty. Moreover, most often, the social services of local governments do not have at their disposal updated information about the structure of inhabitants living in the local government, *inter alia*, about such groups of inhabitants that are most at risk of poverty and social exclusion (*see: Valsts kontroles revīzijas ziņojums. Vai valstī īstenotā sociālās iekļaušanas politika sasniedz tai izvirzītos mērķus nabadzības mazināšanas jomā? Rīga, 2020, 8., 104. un 112. lpp.*). At the court hearing, summoned person Baiba Bela pointed out that, often, needy persons did not know what kind of support in the form of local government social assistance they were entitled to (*see Transcript of the court hearing of 26 May 2020, Case Materials Vol. 4, p. 86*).

In view of the above, the Constitutional Court has not ascertained that the social assistance benefits, granted by local governments, would reach the aim of providing the needy persons with the assistance they require, thus decreasing social inequality and ensuring to these persons a life worthy of human dignity.

22.4. The legislator has established in regulatory enactments also reliefs in various areas. For example, the cost of electricity has been decreased for needy persons and decrease in the amount of immovable property tax in the amount of 90 per cent has been envisaged, as well as full reimbursement of medicines or medical devices. Likewise, to foster the realization of a person's social rights, various social services, ensured by the State and local governments, are envisaged, for example, the services of social care and social rehabilitation. Summoned person Ruta Zilvere noted at the court hearing that, often, assistance

in the form of social service is the most appropriate measure for solving the problems related to a needy person's living conditions (*see Transcript of the court hearing of 20 May 2020, Case Materials, Vol. 4, p. 56*).

The Constitutional Court agrees that the reliefs established in regulatory enactments as well as other social services, in interconnection with other social assistance benefits, may provide support to needy persons. However, it should be taken into account that not all reliefs, for example, legal aid free of charge, are linked to providing for a needy person's basic needs. Moreover, these are granted in particular cases to concrete persons. The fact that the legislator has granted certain reliefs to needy persons in various areas *per se* does not prove that the required assistance was provided to these persons. Moreover, an assessment of the expenditure required to provide for the basic needs, as well as an assessment of social services and reliefs established in regulatory enactments have not been conducted, which would allow the Constitutional Court to ascertain the extent, to which these support measures help to ensure to a needy person the possibility to lead a life worthy of human dignity. The fact that such an assessment had not been performed was confirmed at the court hearing also by the Cabinet's representative (*see Transcript of the court hearing of 19 May 2020, Case Materials, Vol. 3, p. 60*).

22.5. The Constitutional Court concludes that various measures of social support are available to a needy person within the framework of the social security system. However, the state social benefits cannot be assessed as being such that can be used to provide for a person's basic needs, since they have other purposes. Moreover, they are granted to persons who belong to certain groups of inhabitants in particular situations. Thus, the existence of these benefits *per se* does not prove that the legislator had ensured to needy persons the possibility to exercise their social rights at least in the minimum scope. Whereas, in the framework of social assistance, these persons have different possibilities to receive social support. Consequently, it cannot be asserted that the GMI level, in interconnection with other measures of the social security system, would ensure to all needy persons throughout the territory of the state the possibilities to lead a life worthy of human dignity. The State Audit Office also has concluded in its audit report of 2020 that social policy for decreasing inequality and poverty is not implemented effectively. A comprehensive assessment of the existing state and local government support has not been performed to evaluate, whether the available support is sufficient, effective and provides for the needs of the target

group (*see: Valsts kontroles revīzijas ziņojums. Vai valstī īstenotā sociālās iekļaušanas politika sasniedz tai izvirzītos mērķus nabadzības mazināšanas jomā? Rīga, 2020, 7. un 9. lpp.*).

Moreover, even assuming that the benefit for ensuring the GMI level primarily covers a needy person's expenditure for food, it is obvious that this GMI level is not sufficient for providing for this basic need. In the framework of the project "The European Reference Budget Networks", financed by the European Commission, the food consumption basket was studied in Riga in 2015, leading to the conclusion that one person needed for healthy food 150 euro but a family with two children – 574 euro per month (*see: Eiropas Komisija. Pārtikas patēriņa grozs Latvijā, 2016, 2. lpp.*). At the court hearing, summoned person Ingrīda Millere also confirmed that the amount of resources needed per month for healthy food per person exceeded the GMI level. I.e., a person with low daily energy consumption needed at least 93.60 euro per month to provide healthy food, whereas for a person with higher daily energy consumption the amount of necessary resources was at least by 10 per cent higher (*see Transcript of the court hearing of 20 May 2020, Case Materials, Vol. 4, p.4).*

The Cabinet admits that the benefit for ensuring the GMI level does not cover in full a needy person's expenditure for food but notes that also other support measures have been envisaged. With the support of the Fund for European Aid for the Most Deprived, packages of food and basic material provisions are distributed to needy persons, likewise, several sites distributing ready meals and food operate (*see Case Materials, Vol. 2, p. 60*). The Constitutional Court notes that services, provided by various organisations and private persons, may be considered as being measures of the social security system; however, first and foremost, the State and local governments are directly responsible for ensuring to every needy person the possibility to lead a life worthy of human dignity.

Therefore, the GIM level set in the contested norm, in interconnection with other measures of the social security system, does not ensure that every needy person could lead a life worthy of human dignity.

23. In view of the above, the Constitutional Court finds that the legislator has not decided on the most substantive issues relating to setting the GMI level since it has not defined the basic needs, for the provision of which the benefit for ensuring the GMI level is disbursed, and neither has it developed the basic

principles of the method for setting the GMI level. The GMI level has not been set on the basis of a method that would follow from the aim to protect human dignity, level out social inequality or ensure sustainable national development. Moreover, this level, in interconnection with other measures of the social security system, does not ensure to every needy person the possibility to lead a life worthy of human dignity. Thus, it cannot be recognised that the Cabinet had taken measures in due procedure that are required to ensure to needy persons the possibility to exercise the social rights at least in the minimum scope.

Hence, the contested norm is incompatible with Article 1 and Article 109 of the *Satversme*.

24. At the court hearing, the Ombudsman requested the Constitutional Court to review also the compatibility of the contested norm with the second sentence of Article 91 of the *Satversme*. However, in the present case, the Constitutional Court does not need to review the compatibility of the contested norm with the abovementioned norm of higher legal force since its incompatibility with Article 1 and Article 109 of the *Satversme* has been established.

25. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal norm that has been recognised by the Constitutional Court as being incompatible with a legal norm of higher legal force, should be deemed to be void as of the date when the Constitutional Court's judgement is published, unless the Court has provided otherwise. This legal norm grants to the Constitutional Court broad discretion in deciding on the date as of which a norm, which has been recognised as being incompatible with a legal norm of higher legal force, becomes void.

In exercising the right, granted to it in Section 32 (3) of the Constitutional Court Law, the Constitutional Court should ensure, to the extent possible, that the situation, which might arise as of the date when the contested norm becomes void, would not inflict substantial harm upon the interests of the state or society (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22*). I.e., the law not only authorises the Court but also imposes an obligation, so that its judgements would ensure legal stability, clarity and peace in the social reality (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1.*).

In the present case, it should be taken into account that the contested norm pertains to a socially important issue – the minimum of social assistance that is required so that every needy person could lead a life worthy of human dignity and the setting of this minimum. If the Constitutional Court were to rule that the contested norm should be declared void as of the moment when the judgement is delivered then the GMI level would not be defined at all in regulatory enactments and, consequently, it would be impossible to disburse to needy persons the benefit for ensuring this level. Such a decision would cause a substantial threat to the neediest persons rather than ensure legal stability, clarity and peace in Latvia's social reality.

The Constitutional Court has recognised that, in deciding on the term of validity of the judgement, it should be taken into account that the adoption of the state budget is an important area of State's functioning (*see, for example, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 34*). Setting of the GMI level is closely linked to the expenditure envisaged in the state budget and the planning thereof, and this has an impact on economy in general. Therefore, recognising the contested norm as being void as of a certain past date would jeopardise the principle of legal security.

The legislator's obligation to regulate the most essential matters follows from the principle of a socially responsible state, based on human dignity, and the Cabinet, in setting the GMI level, must comply with this regulation. Thus, in the present case, it is necessary and admissible that the norm, which is incompatible with the *Satversme*, remains in force for a certain period to allow the *Saeima* and the Cabinet to adopt new legal regulation, abiding by the findings made in this judgement.

Taking into account that setting of a GMI level that complies with the *Satversme* is needed for the protection of human dignity as well the fact that the respective amendments can be coordinated with the state budget for the next fiscal year, the contested norm shall be recognised as being void as of 1 January 2021.

The Substantive Part

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

held:

to recognise Para 2 of the Cabinet Regulation of 18 December 2012 No. 913 "Regulation on the Guaranteed Minimum Income Level" as being incompatible with Article 1 and Article 109 of the *Satversme* of the Republic of Latvia and void as of 1 January 2021.

The judgement is final and not subject to appeal.

The judgement was delivered in Riga on 25 June 2020.

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

Chairperson of the court hearing I. Ziemele