



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 6 March 2019

in Case No. 2018-11-01

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,

having regard to a constitutional complaint submitted by Edgars Bunka, Ruslans Dudkins, Solvita Kārklīņa, Sarmīte Merce, Ivars Geidāns, Aigars Balodis, Ulla Vilka, Aleksandra Romaščenko, Karina Sergejeva, Inesa Pavlova, Ingrīda Jonāne, Ralfs Meždreijs, Iveta Celmiņa, Dāvis Mednis, Tatjana Ževņeroviča, Daniēls Nātriņš, Rolands Rotts, Kristiāna Bernāne, Atis Pelčers, Aigaris Reinis, Jēkabs Kavtaskins, Dzintra Malaševiča, Liene Štoka, Agnese Lielā, Rita Krūze, Daiga Balode, Laila Eliņa, Terēza Bezručko, Inese Kundžena-Kundženova, Mareks Zeltiņš, Laura Zaķe, and Ilze Usa (hereafter – the Applicants),

on the basis of Article 85 of the *Satversme* of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), Section 19² and Section 28¹ of the Constitutional Court Law,

at the court hearing of 7 February 2019 examined in written procedure the case

“On Compliance of Para 1 and Para 2 of Section 3 (9²) of the law “On Remuneration of Officials and Employees of State and Local Government Authorities” with Article 96 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 1 December 2009, the *Saeima* adopted the law “On Remuneration of Officials and Employees of State and Local Government Authorities (hereafter – Law on Remuneration), which entered into force on 1 January 2010.

On 23 November 2017, the *Saeima* adopted the law “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””, which entered into force on 1 January 2018. By Section 2 of this law, Section 3 (9²) of the Law on Remuneration was expressed in the following wording:

“(9²) To ensure that the human right to the freedom of speech, enshrined in Article 100 of the *Satversme*, including openness of information, is respected and effectively exercised as conveniently as possible for private persons, the remuneration of all employees of the state and the local governments shall be made totally transparent to the public in the following procedure:

the remuneration and other amounts of money that they are entitled to of all officials and employees of an institution shall be published every month on the Internet homepage of the institution, indicating the name, surname, position and the calculated amount, unless the law provides otherwise;

the information about the calculated remuneration and other amounts of money that they are entitled to of the officials and employees of the institution shall be available on the Internet homepage of the institution for at least eight years. If the institution is liquidated, the accessibility of this published information until the expiry of the set term shall be ensured on the Internet homepage of a higher institution;

The Cabinet shall define those institutions of public administrations, as well as officials and employees thereof, whose remuneration and the amounts of money they are entitled to shall not be published due to national security considerations, as well as the final term, upon the expiry of which, this information shall become openly accessible at the National Archives of Latvia.”

2. The Applicants hold that Para 1 and Para 2 of Section 3 (9²) of the Law on Remuneration (hereafter – the contested provisions) are incompatible with Article 96 of the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*).

The Applicants are employees of two State-founded institutions of higher education – the Riga Technical University and the Riga Stradins University. Allegedly, the contested provisions define the obligation of a higher education institution to publish, every month, on its webpage the calculated remuneration and other amounts of money for all officials and employees, indicating the name, surname, position, and the calculated amount. Hence, these provisions are said to determine how the Applicants' data are processed and restrict their right to private life.

The restriction on fundamental rights, included in the contested provisions, had not been established by a law adopted in due procedure because Section 115 (2) of the Rules of Procedure of the *Saeima* had been violated. Moreover, the principle of good legislation had not been respected in the process of adopting the contested provisions.

The *Saeima* had planned to include provisions, similar to the contested ones, in Section 92 of the State Administration Structure Law. However, the President had requested a secondary review of the respective law, expressed objections to it and had called upon the *Saeima* to examine more carefully the proportionality of the planned amendment to Article 92 of the State Administration Structure Law. The *Saeima*, however, contrary to Section 115 (2) of the Rules of Procedure of the *Saeima*, had not taken into consideration the President's objections. Moreover, at the sitting of the *Saeima* on 25 October 2017, the draft law that envisaged adding the contested provisions to the Law on Remuneration had been recognised as being urgent but the proposals regarding such additions had been submitted only for the second reading of the draft law. Hence, competent authorities had not been given the possibility to

provide assessment of the draft law and the *Saeima* had adopted the contested provisions without hearing the opinion of experts of data protection and legal experts on the constitutionality of these provisions.

Allegedly, the restriction on fundamental rights, included in the contested provisions, lacks a legitimate aim because it has been indicated neither in these provisions, nor in explanatory documents to them. Neither have the Members of the *Saeima* pointed to such aim during the sitting of the *Saeima*. The lack of a legitimate aim for the restriction on fundamental rights, included in the contested provisions, is said to be proven by the fact that these provisions are contrary to several provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereafter – the Data Regulation).

If the Constitutional Court were to recognise that the restriction on fundamental rights, included in the contested provisions, has a legitimate aim, then it should be recognised that the measures, used by the legislator, are not suitable for reaching the legitimate aim. Namely, the *Saeima* has applied by analogy, without grounds, the same regulation that is applicable to public officials to employees of state and local government authorities who are not public officials. Thus, anyone is able to identify easily on the homepage of the institution a particular person and follow their remuneration every month.

The Applicants underscore that they, in discharging their duties, are not making decisions that influence society. Likewise, they are not subject to a conflict of interests or risk of corruption. Hence, publishing information about the Applicants' financial status does not reach the aim that is attained by publishing information about the financial status of public officials.

Allegedly, there are more lenient measures, by which the putative legitimate aim of the restriction on fundamental rights, included in the contested provisions, could be reached. Moreover, pursuant to other laws, e.g., the Law on

Submissions or the Freedom of Information Law, society already now has the possibility to receive from an authority all information it is interested in.

Likewise, the benefit that the contested provisions give to society is said to not outweigh the harm inflicted on the Applicants' rights and lawful interests. Publication of the Applicant's personal data on the institution's homepage in no way facilitates public discussions on the use of State budget resources. Society is said to gain from the publication of Applicants' data on the institutions' homepages only an opportunity to satisfy one's curiosity. It is maintained that this public interest does not deserve protection by the State.

Allegedly, the contested provisions allow publishing also such information that pertains to benefits, e.g., a child benefit or a bereavement benefit. Whereas the fact that a sickness benefit has been disbursed points to a person's health condition and provides information that the person has been sick. However, Section 11 of the Personal Data Protection Law and Article 9 of the Data Regulation prohibit processing personal health data, except for the cases referred to in these provisions, and even they do not envisage the right to process the aforementioned information in the procedure established by the contested provisions. Hence, the damage inflicted upon the Applicants' lawful interests is said to outweigh the benefit that the contested provisions provide to society.

3. The *Saeima*, the institution that issued the contested act, states in its written reply that the contested provisions are compatible with Article 96 of the *Satversme*.

Personal data protection is said to fall within the scope of rights, included in Article 96 of the *Satversme*. These rights had been specified in special laws, *inter alia*, the Personal Data Procession Law. Likewise, the Data Regulation pertains to these rights, and the terms, included in its Article 4, have been used in the Personal Data Procession Law.

Pursuant to the contested provisions, information about the remuneration calculated for the Applicants and other amounts of money that they are eligible to must be published every month on the homepage of the respective higher

education institution. Thus, *prima facie*, a restriction on the respective rights can be identified. However, the *Saeima* has not established that information about the Applicants' remuneration, name, surname and position had been published on the Internet homepages of the Riga Technical University and the Riga Stradins University. The *Saeima* is of the opinion that a restriction on the Applicants' fundamental rights cannot be established and the issue of terminating legal proceedings in the case should be examined.

If the Constitutional Court were to recognise that there are no grounds for terminating legal proceedings in the case then, first and foremost, it should be examined whether the restriction on fundamental rights, included in the contested provisions, had been established by a law, adopted in due procedure. The *Saeima* points out that the procedure for adopting the contested provisions had complied with the requirements set in the *Satversme* and the Rules of Procedure of the *Saeima*. The *Saeima* had taken into account the opinions of all institutions, involved in the process of adopting the contested provisions, *inter alia*, those of the President, as well as examined the compliance of the restriction on fundamental rights, included in the contested provisions, with Article 96 of the *Satversme* and the requirements regarding personal data protection.

Allegedly, the right to inviolability of private life, included in Article 96 of the *Satversme*, may be restricted to ensure the right to freedom of information, included in Article 100 of the *Satversme*. The contested provisions had been adopted for the purpose of promoting freedom of information and, thus, protect the rights of private person to freedom of information, included in Article 100 of the *Satversme*. Hence, the legitimate aim of the restriction on fundamental rights, included in the contested provisions, is the protection of other persons' rights.

Allegedly, the contested provisions allow exercising the right to information, guaranteed in Article 100 of the *Satversme*, more effectively. Thus, they are suitable for reaching the legitimate aim of the restriction on fundamental rights.

During the process of adopting the contested provisions, the *Saeima* had examined whether measures that were less restrictive on the Applicants'

fundamental rights existed; however, none of these measures ensures that the legitimate aim of the restriction on fundamental rights is reached at least in the same quality as by the contested provisions.

The *Saeima* points out that the benefit that society gains from the contested provisions outweighs the damage inflicted upon the Applicants' rights and lawful interests. I.e., the contested provisions are said to comply with all principles of data protection – lawfulness, minimisation, and anonymity. Whereas transparency of information is said to decrease the risks related to arbitrary use of the State budget resources. Society is interested in ensuring transparency of information regarding the use of the State budget on as high level as possible, and this public interest is said to be legitimate.

4. The summoned person – the Ministry of Justice – holds that the contested provisions are incompatible with Article 96 of the *Satversme* and requirements set in the Data Regulation on lawful processing of personal data.

It is maintained that the contested provisions impose upon an authority the obligation to publish also information on various benefits granted. Hence, information about a person's health condition may be disclosed, although Article 9 of the Data Regulation prohibits processing of such information. By continuously publishing information about a person's monthly income and storing it in a format that allows analysing changes in remuneration within a period spanning several months, such personal information that is to be considered as being private is affected. Hence, a person's right to inviolability of private life can be seriously violated and other adverse consequences may be caused for a person.

Pursuant to the contested provisions, the income of persons who cannot be considered as being officials also must be published. The limits of reviewing actions of these persons are said to be narrower compared to officials because their work is similar to the work done in private sector and the decisions made by them do not affect society. However, these employees are placed in an unequal situation compared to employees who perform similar tasks in the private sector.

Moreover, allegedly, it is not clear what the public interest is and how transparency and openness are being facilitated if information about a person is stored for the period of eight years, irrespective of whether this person still should be considered as being a public person.

It is maintained that the legitimate aim of the restriction on fundamental rights, included in the contested provisions, could be reached by measures that restrict a person's rights to a lesser extent. Namely, only information about the criteria for determining employees' remuneration and the division of amount of remuneration according to groups of positions could be published, as well as special supplements, referred to in Section 15 (11) of the Law on Remuneration, indicating the amount thereof and the essential function or objective of strategic importance because of which the respective supplement has been determined. Moreover, the law "On Prevention of Conflict of Interest in Activities of Public Officials" already envisages public accessibility of an official's declaration.

5. The summoned person – the Ministry of Finance – subscribes to the opinion provided in the written reply by the *Saeima* and holds that the contested provisions comply with Article 96 of the *Satversme*.

6. The summoned person – the Ombudsman – holds that the contested provisions are incompatible with Article 96 of the *Satversme*.

The Data Regulation is said to be of essential importance in the present case because it reflects the major changes that have occurred in the area of data protection during the last two decades and have been introduced to adapt to the contemporary challenges.

The obligation, established in the contested provisions, to publish on the Internet homepage of institutions the salaries of officials and employees should be recognised as a restriction on the right to private life. I.e., dissemination of personal data to third persons means interference into a person's right to inviolability of private life. Such conclusion, allegedly, can be derived from the

case law of both the Constitutional Court and the European Court of Human Rights.

There had been many deficiencies in the process of adopting the contested provisions. For example, these provisions had been adopted in expedited procedure, had been submitted only for the second reading of the draft law, likewise, annotation had not been annexed to them. Practice like this cannot be supported because it denies the possibility to get to know the legislator's will and the legitimate aim of the restriction on fundamental rights.

However, it can be admitted that the contested provisions had been worded sufficiently clearly and understandably, allowing the persons, to whom they apply, to forecast the consequences of their application. Hence, it can be considered that the restriction on fundamental rights, included in the contested provisions, had been established by law.

The restriction on fundamental rights has a legitimate aim – society's right to receive information about the use of the State budget resources. However, in the particular case, the amount of information offered is said to be disproportionately extensive and general, which does not provide adequate and full view on the use of these resources.

Likewise, the Ombudsman doubts whether the restriction on fundamental rights, included in the contested provisions, is suitable for reaching the legitimate aim. Society needs to know how the State budget resources are spent. However, whether all members of society should be informed about the remuneration of all public officials and employees needs to be examined.

The term of eight years for storing information, defined in the contested provisions, subjects a person's rights to a serious risk. If large amount of data is processed on the Internet the data subject might lose control over their data. After the data are published, it is impossible to trace whether the data are not used for such needs that are incompatible with the initial aim of the publication.

The Ombudsman underscores that it should be assessed whether, indeed, the legitimate aim of the restriction on fundamental rights, included in the

contested provisions, could not be reached by measures that are less restrictive upon a person's rights.

7. The summoned person – the Data State Inspectorate – holds that the contested provisions disproportionately infringe upon persons' right to private life, guaranteed in Article 96 of the *Satversme*. The considerations, included in the opinion provided by the Data State Inspectorate, are similar to the considerations presented in the opinion of the Ministry of Justice and the Ombudsman.

Additionally, the Data State Inspectorate points out that the legislator had not duly aligned the contested provisions with the fundamental rights, included in Article 100 and Article 96 of the *Satversme*. In other Member States of the European Union, it is allowed to publish information about the remuneration of a particular official, indicating the name, surname and position of this official, only in some exceptional cases.

The Data State Inspectorate also holds that it should be considered whether the form and the scope in which personal data are published pursuant to the contested provisions do not create other risks, unrelated to data protection. For example, publishing of personal data that are linked to the economic situation of the data subject might make the respective person, to a certain extent, vulnerable against potential criminal infringements.

8. The summoned person – association “The Latvian Association of Universities” (hereafter – the Association of Universities) – holds that the contested provisions are incompatible with Article 96 of the *Satversme*.

Historically, institutions of higher education have been politically neutral. In equalling employees of higher education institution with civil servants, historical traditions of higher education institutions are disregarded.

The legislator had set out in the contested provisions, in a very general way, that information is published “on the Internet homepage of the institution”. However, the understanding of how the requirements of the contested provisions

should be implemented is said to differ significantly. Without investing financial resources to improve information systems of public authorities, it is impossible to maintain the integrity of the published data in the long-term and securely.

By publishing the information referred to in the contested provisions, data about a person's private life are disclosed without grounds. Likewise, this information not always reflects accurately all aspects of employment and might create misleading perception on how remuneration is set. Accurate information about remuneration of employees of higher education institutions can be obtained only on the basis of concrete request for information and not on the basis of fragmented and general information, referred to in the contested provisions.

9. The summoned person – association “Latvian Association of Certified Data Protection Specialists” (hereafter – the Association of Data Protection Specialists) – points out that the Data Regulation defines the legislator's – the *Saeima*'s – obligation to review whether the planned regulation complies with a person's right to privacy. The *Saeima* has not documented such review. Hence, without knowing all arguments, it is impossible to provide assessment regarding the compliance of the contested provisions with the *Satversme* and the Data Regulation.

However, the Association of Data Protection Specialists notes that, in reviewing the constitutionality of the contested provisions, it is important to take into consideration several principles of data processing, *inter alia*, limitations on storing data, minimality, and accuracy of data. Pursuant to the principle of storage limitation, personal data should be stored no longer than needed for the purposes, for which these data are processed. Pursuant to the principle of data minimisation, data should be processed in adequate and responsible way. In the context of this principle, the legitimate aim of the restriction on fundamental rights, included in the contested provisions, could be reached by decreasing or anonymising the categories of data to be published, for example, by providing a summary on the salaries disbursed in the authority. Whereas pursuant to the

principle of data accuracy, only such data that are accurate and do not inflict harm upon the data subject should be published.

10. The summoned person – LL.M. Katrīne Pļaviņa – points out that the contested provisions restrict a person’s right to private life. However, the restriction on fundamental rights, included in these provisions, have a legitimate aim – public control over the remuneration disbursed to the subjects of the Law on Remuneration. Allegedly, this legitimate aim is included in sub-para “e” of Par 1 of Article 23 of the Data Regulation.

It is not disputed in the case whether the contested provisions are suitable for reaching the legitimate aim. The dispute in the case is regarding the existence of more lenient measures for reaching the legitimate aim and the proportionality of the term for data storage.

One of the measures that would allow reaching the legitimate aim of the restriction on fundamental rights, included in the contested provisions, would be publishing the employees’ remuneration in intervals, e.g., indicating that the remuneration is from EUR 1000 to EUR 2000.

Allegedly, the contested provisions are incompatible with several principles of data protection, *inter alia*, the principles of minimality and restricted data storage. Incompatibility with the principle of minimality is said to arise because the legitimate aim of the restriction on fundamental rights could be reached by publishing smaller amount of personal data.

Whereas incompatibility with the principle of restricted storage can be established because the term of eight years exceeds the time needed for attaining the legitimate aim. The *Saeima* substantiates the public access of remuneration data for eight years after disbursement thereof by the possibility to observe the link between remuneration to employees, subjects of the Law on Remuneration, and the political choice of members of the public, made during elections. This argument by the *Saeima* is substantiated only by statements made by one Member of the *Saeima* and is not a clear indication of the term of public access needed for reaching the aim.

11. The summoned person – Signe Plūmiņa – notes that the compliance of the contested provisions with Article 96 of the *Satversme* should be reviewed in conjunction with the Data Regulation. The *Saeima*, however, in adopting the contested provisions, had violated several fundamental principles of data procession, included in this Regulation.

The need of clear purpose for processing data is said to follow from Subpara “b” of Para 1 of Article 5 of the Data Regulation. However, the *Saeima* had not defined the purpose of data processing with sufficient accuracy and clarity.

Likewise, the *Saeima* had not conducted sufficiently detailed assessment of those categories of data subjects, certain information related to whom should be published on the Internet homepage of the institution. The *Saeima* also has not used sufficiently clear criteria in considering, whether publishing the remuneration of data subjects on the Internet would help to reach the defined aims of the law. One general category of data subjects had been defined in the law – all public officials and employees. However, these officials and employees perform very diverse functions and tasks. Therefore, the approach to restricting the right of these persons to data protection in public interests should be different.

Those categories of data subjects, information about whom is published on the Internet homepage of the institution, should have been assessed in greater detail. Namely, whether the publishing of employees’ remuneration is proportionate to the aim to be reached had to be examined. For example, considerations had to be made whether, indeed, it was necessary to publish the respective information about all employees, *inter alia*, people doing administrative and maintenance work who do not make decisions important for society.

The *Saeima* has not provided evidence-based information that the personal data that would be publicly accessible on the Internet homepages of institutions for eight years would help to reach the aim – have overview on the dynamics of remuneration for work over a longer period of time. Likewise, the legislator has

not provided more detailed assessment on whether the legitimate aim of the restriction on fundamental rights, included in the contested provisions, could be reached by measures that restrict the rights of a data subject to a lesser extent.

12. The Riga Technical University informs the Constitutional Court that information about remuneration disbursed to officials and employees has been available on its homepage since 1 January 2018.

However, the accessibility of information, envisaged in the contested provisions, has not been ensured continuously due to both legal and technical reasons. Hence, the University does not refute the statement made in the *Saeima's* written reply that, for certain time, full information about remuneration disbursed to employees had not been available on its homepage. These disruptions in the accessibility of information can be explained also by the fact that the legislator, in adopting the contested provisions, had not taken in consideration the specificity of functioning of a higher education institution and had applied to an institution of higher education the same regulation that applies to other state and local government authorities. The number of employees of the Riga Technical University is very high and, thus, each month large amount of information has to be processed to differentiate between those employees to whom the contested provisions apply and those to whom these provisions do not apply.

13. The Riga Stradins University informs the Constitutional Court that it does not publish on its Internet homepage information about employees' remuneration because of the collision between the contested provisions and the Data Regulation. I.e., the University, instead of the contested provisions, is applying the aforementioned Regulation, which defines sufficiently strict requirements regarding data protection. This Regulation, *inter alia*, envisages also sanctions for unlawful publishing of personal data and the University is not ready to assume substantial financial risk that would follow from disregarding the requirements set in this Regulation.

The Findings

14. The *Saeima* has expressed considerations regarding termination of legal proceedings in the case on the basis of Para 6 of Section 29 (1) of the Constitutional Court Law. I.e., it notes that the contested provisions had not been applied to the Applicants and, thus, had not infringed upon their rights. This statement has been substantiated by the fact that information about the calculated remuneration and other amounts of money that the Applicants had been entitled to had not been published on the Internet homepages of the Riga Technical University and the Riga Stradins University.

If arguments that could be the grounds for terminating legal proceedings have been expressed in a case they must be examined first and foremost (*see, for example, Judgement by the Constitutional Court of 6 June 2018 in Case No. 2017-21-01, Para 9*).

Hence, the Constitutional Court will establish whether the contested provisions had caused an infringement on the Applicants' fundamental rights.

15. The contested provisions establish the procedure, in which society is informed about remuneration of officials and employees of State and local government authorities. Pursuant to Para 1 of Section 3 (9²) of the Law on Remuneration, the calculated remuneration to officials and employees of State and local government authorities as well as other amounts of money that they are entitled to are published every month on the Internet homepage of the institution, indicating the name, surname, position, and the calculated amount. Whereas pursuant to Para 2 of Section 3 (9²) of this law, the said information is kept on the Internet no less than for eight years. It follows from the contested provisions that the obligations defined therein are imperative by nature. Hence, to apply the contested provisions, a separate act on applying these legal provisions is not necessary.

The Applicants are employees of the Riga Technical University and the Riga Stradins University (*see Certificates provided by the Riga Technical University and certificates provided by the Riga Stradins University, Case Materials, Vol. 1, pp. 28–59*). It is set out in the Constitutions of both aforementioned higher education establishments, approved by the law “On the Constitution of the Riga Stradins University” and the law “On the Constitution of the Riga Technical University”, that they are State-founded institutions of higher education and science, i.e., State-founded institutions of higher education. Pursuant to Para 15 of Section 2 (1) of the Law on Remuneration, also the State-founded institutions of higher education are to be considered public authorities, in the meaning of this law.

Hence, the obligations, established in the contested provisions, are applicable also to the Applicants’ employers: the Riga Technical University and the Riga Stradins University.

15.1. The Riga Technical University has published information about remuneration and other amounts, disbursed to its employees, indicating their name, surname, and position, within a certain period of time, from January 2018 on its Internet homepage (*see Opinion of the Riga Technical University, Case Materials, Vol. 1, pp.173–175.*). The Riga Stradins University, in turn, has not published the aforementioned information on its Internet homepage (*see Opinion by the Riga Stradins University, Case Materials, Vol. 3, pp. 57–63*).

Hence, with respect to those Applicants, who are employees of the Riga Stradins University, the information, defined in the contested provisions, is not available on the Internet homepage.

15.2. The contested provisions impose an obligation, first and foremost, on the Applicants’ employers. However, they affect also the Applicants because they regulate publishing and storing of information related directly to them.

The fact that, for a part of Applicants, due to reasons beyond their control, the legal effects of the contested provisions have not set in does not mean that they do not fall within the legal scope of these provisions (*compare: Judgement by the Constitutional Court of 12 May 2016 in Case No. 2015-14-0103*,

Para 16.3.). Due to the imperative nature of the contested provisions, the infringement on the Applicants' fundamental rights has occurred at the moment when these provisions entered into force.

Thus, the Applicants have entered into the scope of the contested provisions, which have caused infringement on the Applicants' fundamental rights, and legal proceedings in the case must be continued.

16. The Applicants hold that the contested provisions place disproportional restrictions on the fundamental rights, included in Article 96 of the *Satversme*, because they provide for the processing of their personal data. I.e., they establish an obligation for the Applicants' employers to publish every month on the Internet the remuneration and other amounts of money calculated for their employees, indicating their name, surname, position, and the calculated amount, as well as the obligation to store this information on the Internet for eight years.

16.1. Article 96 of the *Satversme* provides that everyone has the right to the inviolability of private life, home, and correspondence.

In specifying the right to inviolability of private life, included in Article 96 of the *Satversme*, the Constitutional Court has noted that this right comprises various aspects. It comprises an individual's right to their private space where they would suffer minimal interference by the State or other persons. It also protects an individual's physical and mental integrity, respect and dignity, identity, and personal data. Information about a person also belongs to the content of the concept "right to inviolability of private life (*see Judgement by the Constitutional Court of 16 June 2016 in Case No. 2015-18-01, Para 10*).

Article 89 of the *Satversme* provides that the State recognises and protects fundamental human rights in accordance with the *Satversme*, laws and international agreements binding upon Latvia. It follows from this article that the legislator's aim is to achieve harmony between the human rights provisions, included in the *Satversme*, and the provisions of international law. The international human rights provisions, binding upon Latvia, and the application thereof on the level of constitutional law serve as a means of interpretation to

determine the content and scope of fundamental rights and principles of a state governed by the rule of law, insofar this does not lead to decreasing or restricting fundamental rights, defined in the *Satversme* (see, for example, *Judgement by the Constitutional Court in Case No. 2015-14-0103, Para 15.1.*).

The Constitutional Court has noted previously that, in clarifying the content of fundamental rights, defined in Article 96 of the *Satversme*, in conjunction with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, public authorities not only have a negative obligation to abstain from any unfounded interference into the right to inviolability of private life but also a positive obligation to take the necessary actions required to protect these rights. The legislator must create such mechanism for personal data protection that would ensure that the rules on data processing comply with the set aim. Processing of data that are related to a person's private life, *inter alia*, disclosure and storage, falls within the scope of a person's right to inviolability of private life (see *Judgement by the Constitutional Court of 11 October 2018 in Case No. 2017-30-01, Para 11.2.*).

16.2. Article 68 of the *Satversme* provides and the Constitutional Court has recognised that, with ratification of the Agreement on Latvia's Accession to the European Union, the European Union law has become an integral part of the Latvian legal system. Hence, legal acts of the European Union and interpretation thereof, consolidated in the case law of the Court of Justice of the European Union, must be taken into account in clarifying the content of national regulatory enactments and in their application (see *Judgement by the Constitutional Court of 11 April 2018 in Case No. 2017-12-01, Para 13.*).

Para 1 of Article 16 of the Treaty on the Functioning of the European Union and Para 1 of Article 8 of the Charter of Fundamental Rights of the European Union provide that everyone has the right to the protection of personal data concerning him or her. The protection of this right is defined by the Data Regulation, which replaces Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to

the processing of personal data and on the free movement of such data (hereafter – Directive 95/46/EC).

Pursuant to Para 1 of Article 4 of the Data Regulation, personal data means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

In view of the above, information about an identifiable person's name, surname, position, and the calculated remuneration, as well as other amounts to be disbursed to this person must be considered as being personal data. Whereas disclosure and storage of personal data are data processing operations, in the meaning of Para 2 of Article 4 of the Data Regulation. Hence, publishing and storing of information concerning the Applicants, defined in the contested provisions, is to be considered as being processing of personal data. The said information comprises such data that are related to persons' private lives and processing of such data is interference into the Applicants' private lives.

Hence, the contested provisions restrict the Applicants' right to inviolability of private life, defined in Article 96 of the *Satversme*.

17. The right to inviolability of private life may be restricted. To establish whether such a restriction on fundamental rights is justifiable, it must be verified whether:

- 1) the restriction has been established by law;
- 2) the restriction has a legitimate aim;
- 3) the restriction is proportional (*see, for example, Judgement by the Constitutional Court of 11 October 2018 in Case No. 2017-30-01, Para 12*).

The Applicants hold that the restriction on fundamental rights, included in the contested provisions, has not been established by a law, adopted in due procedure. Namely, in the process of their adoption, Section 115 (2) of the Rules

of Procedure of the *Saeima* had been violated and the principle of good legislation had not been complied with. Also, the summoned persons – the Association of Universities and Signe Plūmiņa have expressed some considerations regarding the non-observance of the procedure for adopting the contested provisions (*see Opinion of the Latvian Association of Universities, Case Materials, Vol. 1, pp. 163–172, and Signe Plūmiņa’s Opinion, Case Materials, Vol. 3, pp. 82–88*).

The contested provisions were included in the Law on Remuneration by the law of 23 November 2017 “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””, eight sections of which regulate various legal issues. The Applicants contest only those provisions of the Law on Remuneration, which envisage a restriction on their rights, i.e., the employers’ obligations to publish on their Internet homepages information about the remuneration disbursed to the Applicants, indicating their name, surname, and position. Hence, the assessment, made by the Constitutional Court, will pertain to the contested provisions and Section 2 of the law of 23 November 2017 “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””, by which they were included in the Law on Remuneration.

In assessing whether the restriction on fundamental rights had been established by a law, adopted in due procedure, the Constitutional Court must verify whether the law :

1) has been adopted in compliance with the procedure envisaged in regulatory enactments;

2) has been promulgated and is publicly accessible in accordance with statutory requirements;

3) has been worded with sufficient clarity, allowing a person to understand the content of the rights and obligations, following from it, and forecast the consequences of its application (*see, for example, Judgement by the Constitutional Court of 11 October 2018 in Case No. 2017-30-01, Para 13*).

18. The Constitutional Court has recognised that the *Saeima*, in exercising its right to legislate, enjoys discretion, insofar general legal principles and other provisions of the *Satversme* are not violated (*see Judgement by the Constitutional Court of 19 October 2017 in Case No. 2016-14-01, Para 25*). The legislative process not only should comply with the formal requirements, set in regulatory enactments, but also should facilitate persons' trust in the State and in law (*see Judgement by the Constitutional Court of 12 April 2018 in Case No. 2017-17-01, Para 21.3*).

18.1. The principle of a state governed by the rule of law is one the general legal principles that has been derived from the basic norm of a democratic state governed by the rule of law. It requires the existence of such legal system, in which, to the extent possible, such legal regulation that is incompatible with the *Satversme* or other superior legal provisions is eliminated (*compare: Judgement by the Constitutional Court of 28 November 2014 in Case No. 2014-09-01, Para 2*).

In a democratic state governed by the rule of law, certain requirements with respect to the legislative process also follow from the principle of a state governed by the rule of law (*see, for example, Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Para 11.2.*). It follows from the Constitutional Court's case law that general legal principles, procedural pre-conditions and requirements, regulated in the *Satversme* and the Rules of Procedure of the *Saeima*, must be respected in the legislative procedure, also in the course of adopting those draft laws that are related to the State budget. The legislator must assess the compliance of legal provisions, proposed in the draft law, with superior legal provisions, *inter alia*, the *Satversme*, provisions of international and the European Union law, and must align the legal provisions, proposed in the draft law, with the legal provisions already existing within the legal system in accordance with the principle of a rational legislator (*compare: Judgement by the Constitutional Court of 3 February 2012 in Case No. 2011-11-01, Para 11.2. and Para 12; Judgement of 8 March 2017 in Case*

No. 2016-07-01, Para 25.2.). Likewise, the Constitutional Court has concluded that, in the course of adopting a legal provision, the legislator must examine arguments regarding alleged incompatibility of this provision with the Constitutional Court's case law on the respective matter (*see, for example, Judgement by the Constitutional Court of 12 April 2018 in Case No. 2017-17-01, Para 22.3.*). In general, the legislator reviews a draft law openly at the sittings of the *Saeima* and the *Saeima* committees, including the possibility to debate and ensuring that the deputies can exercise their right to expression and the right to vote. Likewise, where necessary, explanatory research must be used to substantiate the proposed legal regulation. It is the discussion on the proposals that ensures the possibility to assess whether alternatives to the proposed legal regulation exist (*see Judgement by the Constitutional Court of 19 October 2017 in Case No. 2016-14-01, Para 25.2.*). Pursuant to the Preamble to the *Satversme*, actions by the State, *inter alia*, the legislative process, must be aimed at sustainable development. I.e., the legislative process should be directed at developing sustainable legal regulation. Thus, in creating legal provisions, the legislator, in particular, where fundamental rights are restricted, must take as the basis studies of the social impact of the proposed legal regulation and must consider the measures needed to introduce and enforce this legal regulation (*compare: Levits E. Laba likumdošana un parlamenta zinātniskais dienests. Grām.: Levits E. Valstsgriba. Idejas un domas Latvijai 1985–2018. Rīga: Latvijas Vēstnesis, 2019, 737. lpp.*). Moreover, the legislator must consider the risk estimates made by the specialists of the sector and must introduce timely risk-prevention measures (*compare: Judgement by the Constitutional Court of 22 June 2010 in Case No. 2009-111-01, Para 29.3.*). In a democratic state governed by the rule of law, the legislator is also obliged to provide timely and adequate information and, to the extent possible, involve, directly or indirectly, society in the legislative process and consult with stakeholders [*compare: Judgement by the Constitutional Court of 26 November 2009 in Case No. 2009-08-01, Para 17.2., and Judgement of 21 December 2009 in Case No. 2009-43-01, Para 26; compare also: Voermans W. J. Legislation and*

Regulation. In: Karpen U., Xanthaki H. (Eds.) Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners. Oxford: Hart, 2017, p. 24; “The Rule of Law Checklist” of the European Commission for Democracy through Law (the Venice Commission) of 18 March 2016. gada No. 711/2013 Available: www.venice.coe.int].

The said requirements constitute the content of the principle of good legislation, derived from the principle of a state governed by the rule of law. These are the main but not the only elements, specifying the principle of good legislation, which, *inter alia*, allow understanding why the legislator has established specific restrictions on fundamental rights and the considerations why such a restriction is admissible in a democratic state governed by the rule of law. These requirements must be met in establishing any restriction on fundamental rights.

The Constitutional Court has noted previously that, within Latvian society, democracy is not yet considered as being self-evident (*see Judgement by the Constitutional Court of 19 June 2018 in Case No. 2017-25-01, Para 23*). The branches of power of a democratic state governed by the rule of law, *inter alia*, the legislator, should strive to increase persons’ trust in the State and law, as well as understanding of the democratic process. Respect for the principle of good legislation facilitates reaching of this aim.

18.2. The contested provisions are included in the law “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””, which was adopted by the *Saeima* on 23 November 2017. The draft of this law, in turn, was included in the package of draft laws accompanying the draft law “On the State Budget for 2018”, was recognised as being urgent and was adopted in two readings.

The procedure, established in the Rules of Procedure of the *Saeima*, in which the draft law on the annual State budget and the draft laws, which determine or amend the State budget, are reviewed, differs from the procedure for reviewing other draft laws. Section 87¹ of the Rules of Procedure of the *Saeima* provides that the package of draft budget laws is composed of a draft

annual State budget law and draft laws, which prescribe or amend the State budget. The legislator has the right and also an obligation to include in the draft budget law and in the accompanying package of laws only such matters, which, firstly, pertain to the particular fiscal year and, secondly, are closely linked to the use of the State financial resources (*see Judgement by the Constitutional Court of 19 December 2011 in Case No. 2011-03-01, Para 18*). In view of the special procedure established for reviewing the package of draft budget laws, the *Saeima* must examine whether all draft laws, included in the package of draft budget laws or proposals concerning these draft laws, comply with the criteria, indicated in Section 87¹ of the Rules of Procedure of the *Saeima*. If a draft law or a proposal does not meet these criteria the *Saeima* must exclude it from the package of draft budget laws (*see, for example, Judgement by the Constitutional Court of 19 October 2017 in Case No. 2016-14-01, Para 25.1.*).

Initially, the contested provisions were not included in the draft law No. 1056/Lp12 “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””. Ints Dālderis, Member of the 12th convocation of the *Saeima*, submitted the proposal, which envisaged adding the contested provisions to the aforementioned draft law, for the 2nd reading. The proposal was substantiated by a reference to the conclusion made by the Public Administration and Local Government Committee of the 12th convocation of the *Saeima*, which states that “facilitation of transparency must be resolved in this law” (*see Letter by Ints Dālderis, Member of the 12th convocation of the Saeima “Regarding proposals for the draft law “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””. Available: titania.saeima.lv*). The Public Administration and Local Government Committee of the 12th convocation of the *Saeima* decided not to support this proposal as such that is not applicable to the State budget (*see: Table of proposals for the second reading of the draft law No. 1056/Lp12 Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””. Available: titania.saeima.lv; Case Materials, Vol. 1, p. 1. 118*).

The Constitutional Court has recognised that the Rules of Procedure of the *Saeima* entrust a considerable part of the preparatory work related to a draft law to the committees of the *Saeima* and that the responsible committee is the one that ensures that the draft law is fully prepared for being reviewed at the sitting of the *Saeima* (see *Judgement by the Constitutional Court of 19 December 2011 in Case No. 2011-03-01, Para 18*). At the sitting of the *Saeima* on 22 November 2017, deputy Edgars Putra, reporting about the contested provisions on behalf of the Budget and Finance (Taxation) Committee, noted that the proposal regarding adding the contested provisions to the Law on Remuneration had not been supported by the Committee. However, after debates were closed, deputy E. Putra stated regarding this proposal that it was “political choice” and invited “to express one’s attitude by voting for this proposal” (see *Transcript of the sitting of the Saeima on 22 November 2017. Pie: titania.saeima.lv*).

Pursuant to Section 1 (1) of the Law on Budget and Finance Management, a budget is a means for implementation of the State policy through financial methods. Whereas pursuant to the second part of the aforementioned section, the purpose of the budget is to determine and substantiate the means required for the government, other State authorities and local governments to fulfil the State obligations whose financing is determined by legislative acts, ensuring that within the period for which these funds are provided for the expenditures are covered by corresponding revenues. When formulating the budget, the necessity of ensuring an overall economic balance must be taken into account.

In a broader sense, the contested provisions regulate also the transparency of information related to the use of the budget resources of State and local government authorities. Neither the preparatory materials related to the contested provisions, nor the text of the contested provisions give grounds for concluding that the contested provisions would regulate implementation of the State policy through financial methods or would substantiate the need for financial means for fulfilling State obligations within the respective fiscal year. Moreover, at the sitting of the 12th convocation of the *Saeima* on 22 November 2017, deputy Ints

Dālderis noted with respect to the proposal that he himself had submitted that “there is no fiscal impact, there is not increased administrative burden” (*see Transcript of the sitting of the 12th convocation of the Saeima on 22 November 2017. Available: titania.saeima.lv*). The fact that the contested provisions establish transparency of information related to the use of the budget of State and local government authorities *per se* does not mean that it was necessary to adopt these provisions in order to regulate the State’s financial operations in the current fiscal year.

A draft law should be viewed as such that pertains to a particular fiscal year if it envisages such regulation that influences the State’s financial operations in the respective fiscal year. The contested provisions do not establish such regulation.

Thus, the legal regulation that is included in the contested provisions does not meet the criteria indicated in Section 87¹ of the Rules of Procedure of the *Saeima* and does not pertain to the State’s financial operations in the particular fiscal year. Hence, it should not have been included in the draft law, included in the package of draft laws accompanying the law “On the State Budget for 2018”, and the *Saeima* was obliged to not include it into the package.

18.3. The Applicants note, *inter alia*, that the second part of Section 115 of the Rules of Procedure of the *Saeima* had been violated in the course of adopting the contested provisions because the *Saeima* had not examined the objections, expressed by the President, requesting secondary review of the provisions, similar to the contested provisions, in the *Saeima*. Namely, provisions that were similar to the contested provisions had been included in the draft law, submitted to the *Saeima*, No. 577/Lp12 “Amendments to the State Administration Structure Law” (hereafter – amendments to the State Administration Structure Law), which the *Saeima* adopted in the third reading on 22 June 2017. The President, in turn, on 30 June 2017, requested secondary review at the *Saeima* of the amendments to the State Administration Structure Law.

However, the contested provisions were adopted – in the framework of another legislative process, i.e., on 23 November 2017, adopting the law “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities””.

Hence, the Constitutional Court must verify whether the *Saeima*, in adopting the contested provisions, had to review the objections, expressed by the President on 30 June 2017, requesting secondary review at the *Saeima* of amendments to the State Administration Structure Law. If the *Saeima* was obliged to do this, in turn, then Constitutional Court must verify whether this obligation was fulfilled.

18.3.1. Article 71 of the *Satversme* provides that, within ten days of the adoption of a law by the *Saeima*, the President, by means of a written and reasoned request to the Speaker of the *Saeima*, may require that a law be reconsidered. If the *Saeima* does not amend the law the President may not raise objections a second time.

The President, in discharging the functions, defined in the *Satversme*, must use the legal measures at their disposal to ensure that the *Satversme* and general legal principles are complied with (*compare: Decision by the Constitutional Court of 19 December 2012 on Terminating Legal Proceedings in the Case No. 2012-03-01, Para 21*). The President must ensure the function of check-and-balances with respect to the parliament in legislation, by exercising their right to require reconsideration of a law (*compare: Balodis R. Ievads Latvijas Republikas Satversmes III nodaļas komentāram. Grām.: Balodis R. (zin. red.) Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets. Rīga: Latvijas Vēstnesis, 2017, 20. lpp.*). This right allows the President to influence and balance the legislator, as well as to control the compliance of laws, adopted by the Parliament, with the constitution and the national interests (*see: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums. Rīga: Latvijas Vēstnesis, 2014, 222. lpp.*). The President’s task is, by becoming involved in the stage where the constitutional bodies make decisions, to give a certain impulse for improving this

decision. Namely, the President's right to transfer a law for secondary review is intended, *inter alia*, to improve the legal quality (lawfulness) of the law (*compare.: Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros. Grām.: Valsts prezidenta Konstitucionālo tiesību komisija. Viedokļi: 2008–2011. Rīga: Latvijas Vēstnesis, 2011, 113.–114. lpp.*). The purpose of the legal institution of secondary review of a law is to facilitate the internal alignment of the legal system.

If the President has expressed objections to legal regulation the *Saeima* may not try to avoid reviewing the constitutionality of this legal regulation and its compliance with the internal alignment of the legal system, by including the respective regulation in another draft law, thus violating the principle of good faith. Such understanding would be contrary to the principle of good legislation because the legislator, in the process of legislation, would not examine the objections made by a constitutional body involved in it, i.e., the President, and the legal institution of the secondary review of a law would not reach its aim. Bodies of State power may not act contrary to the principle of good faith.

A situation like this would be contrary to the principle of inter-institutional loyalty, which has been derived from the principle of separation of powers and must be respected by authorities of a democratic state governed by the rule of law in their relations (*compare: Decision by the Constitutional Court of 8 June 2012 on Terminating Legal Proceedings in Case No. 2011-18-01, Para 17.4.*). This means that the State authorities cannot limit their actions, within their mutual relations, to formal discharge of obligations defined in regulatory enactments and the Constitution. These actions must facilitate fulfilment of obligations and mutual respect of all constitutional bodies [*compare: Opinion by the European Commission Democracy through (Venice Commission) of 17 December 2012 No. 685/ 2012 On the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law No/ 47/ 1992 regarding the organisation and functioning of a referendum of Romania,*

*Para 72. Available: www.venice.coe.int]. In democratic states governed by the rule of law, constitutional bodies have the duty to respect, in their mutual relations, the competence of another constitutional body (*compare: Degenhart C. Staatsrecht I. Staatsorganisationsrecht. Mit Bezügen zum Europarecht. 33. Auflage. Heidelberg: Müller, 2017, S. 320*). Namely, if the *Satversme* provides for the President's right to request secondary review of a law then the *Saeima* has the obligation to examine all objections expressed by the President. Moreover, pursuant to the principle of good legislation, this examination should be such that allows establishing the considerations due to which the objections expressed by the President had been dismissed.*

Section 6 of the amendments to the State Administration Structure Law envisaged expressing Section 92 of the State Administration Structure Law in new wording, i.e., to define the obligation of authorities to publish and to store for 10 years on the Internet homepage of the institution information about remuneration disbursed to their officials and employees, indicating the name, surname, and position of the respective person.

Thus, the contested provisions and the legal provisions, envisaged in the amendments to the State Administration Structure Law, provided for personal data processing, by publishing them every month on the Internet homepage and storing them on the Internet for, respectively, eight or 10 years. Namely, the aforementioned obligations regarding data processing are not substantially different in terms of their content.

Thus, by the amendments to the State Administration Structure Law, it had been envisaged to impose a restriction on the right to inviolability of private life, defined in Article 96 of the *Satversme*, which, substantially, is similar to the one set out in the contested provisions. Hence, in accordance with the principle of good legislation and the principle of mutual loyalty between the constitutional bodies, the *Saeima* had the obligation to review, in the course of adopting the contested provisions, also the objections against the amendments to the State Administration Structure Law, expressed by the President on 30 June 2017, demanding their secondary review in the *Saeima*.

18.3.2. On 30 June 2017, the President, requesting reconsideration of the amendments to the State Administration Structure Law, pointed to deficiencies in the course of adopting these amendments. He drew attention, *inter alia*, to the fact that the *Saeima* had not reviewed the constitutionality of the restriction on fundamental rights, defined in Article 96 of the *Satversme*, envisaged by the amendments to the State Administration Structure Law, and their compliance with the requirements regarding personal data protection. The President noted that by the regulation, included in the amendments to the State Administration Structure Law, officials and employees of public persons' authorities could, actually, be denied the possibility to maintain control over their personal data, restrict the use thereof, request changes to them or achieve their deletion (*see Case Materials, Vol. 2, p. 7*).

Likewise, in connection with reconsideration of the amendments to the State Administration Structure Law, the Legal Bureau of the *Saeima*, the Data State Inspectorate and the Association of Data Protection Specialists also called upon the *Saeima* to review the proportionality and compliance with the personal data protection requirements of the obligation to publish and store the remuneration of officials and employees of State and local government authorities, indicating the name, surname, and position of the respective person (*see Audio recordings of the sittings of the Public Administration and Local Government Committee of the 12th convocation of the Saeima, Case Materials, Vol. 3*).

In the framework of secondary review, the Public Administration and Local Government Committee of the 12th convocation of the *Saeima* envisaged expressing Section 92 of the State Administration Structure Law in new wording that no longer comprised the restriction, which, substantially, is similar to the one included in the contested provisions.

The contested provisions, in turn, as the proposal by deputy Ints Dālderis, were include in the draft law “Amendments to the Law “On Remuneration of Officials and Employees of State and Local Government Authorities”” only at the second and the final reading. The Budget and Finance (Taxation) Committee

of the *Saeima*, which was responsible for these amendments, did not support this proposal, pointing to their incompatibility with the criteria, defined in Section 87¹ of the Rules of Procedure of the *Saeima* (see *Para 18.2. of this judgement*), and it follows from the materials in the case that it had not examined the constitutionality of the restriction on fundamental rights, included in the contested provisions. At the sitting of the 12th convocation of the *Saeima*, held on 22 November 2017, the deputies discussed the said proposal by deputy Ints Dālderis, however, neither the proportionality of the restriction on fundamental rights, included in the contested provisions, nor its compliance with data protection requirements were examined during the respective discussions. Deputy Sergejs Dolgopolovs pointed out that the Law on Remuneration included authorisation to the Cabinet to assess the scope of the obligation related to publishing information about the remuneration of officials and employees of State and local government authorities and underscored that this issue had already been resolved and, whether the solution was good, that would “rest upon the Cabinet’s conscience because they are responsible for these regulations and the [...] content thereof, as proposed by the Committee” (see *Transcript of the sitting of the 12th convocation of the Saeima of 22 November 2017. Available: titania.saeima.lv*). The Constitutional Court draws attention to the fact that if the legislator has discussed legal regulation, possibly, repeatedly, *per se* it does not mean that the legislator, indeed, had reviewed the compatibility of the restriction on fundamental rights, included in this legal regulation, with the Constitution [compare: *Joint Dissent Opinion of the Judges of the European Court of Human Rights Ziemele, Sajó, Kalaydjyeva, Vučinić and De Gaetano on the Judgement in the Case “Animal Defenders International v. The United Kingdom”, Application No. 48876/08, Para 9*].

Thus, it follows from the preparatory materials of the contested provisions that the *Saeima*, in the course of adoption thereof, had not reviewed on their merits the objections expressed in the President’s reasoned request, *inter alia*, with respect to the compatibility of the obligation of public authorities to publish on the Internet homepage information about the calculated remuneration and

other amounts of money for their officials and employees, indicating their name, surname, and position, with the *Satversme* and requirements set for the protection of natural persons' personal data.

18.4. The Applicants point to considerations regarding the incompatibility of the contested provisions not only with Article 96 of the *Satversme* but also the Data Regulation. The Applicants hold that, in the course of adopting the contested provisions, the *Saeima* had not heard the opinion of data protection and legal experts regarding the compliance of the contested provisions with the Data Regulation (*see Application in Case Materials, Vol. 1, p. 6*). Moreover, several summoned persons have expressed considerations regarding the incompatibility of the obligation, established in the contested provisions, with the principles of personal data processing, included in Article 5 of the Data Regulation (*see Opinion of the Ministry of Justice, Case Materials, Vol. 1, pp. 184–189, Opinion of the Data State Inspectorate, Case Materials, Vol. 1, pp. 191–194, Katrīne Pļaviņa's Opinion, Case Materials, Vol. 3, pp. 69–76, Opinion of the Association of Data Protection Specialists, Case Materials, Vol. 3, pp. 77–81, and Signe Plūmiņa's Opinion, Case Materials, Vol. 3, pp. 82–88*).

At the time when the contested provisions were adopted, Directive 95/46/EC was in force. It did not set special requirements regarding the legislative process, in which decisions on establishing restrictions on a person's right to data protection were made. However, at the same time, the Data Regulation was in force, Para 1 of Article 99 of which provided that it entered into force on the twentieth day following its publication in the Official Journal of the European Union. The Data Regulation was published in the Official Journal of the European Union on 4 May 2016 (publication No. L 119). Thus, the Data Regulation entered into effect on 24 May 2016, becoming from this date a part of the legal system of the Member States of the European Union, *inter alia*, that of Latvia [*see: Gailītis K., Markus K. Eiropas Savienības tiesību avoti. Grām.: Schewe C., Buka A., Gailītis K., Strazdiņš Ģ. (zin. red.) Eiropas Savienības tiesības. I daļa. Institucionālās tiesības. Rīga: Tiesu namu aģentūra, 2014, 232. lpp.; sal.: Lenaerts K., Van Nuffel P. Constitutional Law of the European*

Union. 2nd edition. London: Sweet & Maxwell, 2006, p. 764]. Whereas pursuant to Para 2 of Article 99 of the Data Regulation, it became applicable from 25 May 2018.

18.4.1. The first paragraph of Article 4 (3) of the Treaty on the European Union provides that, pursuant to the principle of sincere cooperation, the Union and the Member States must, in full mutual respect, assist each other in carrying out tasks which follow from the Treaties. The third paragraph of the third part of the said article sets out that the Member States facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives [*see: Lenaerts K., Gutiérrez-Fons A. J. A Constitutional Perspective. In.: Schütze R., Tridimas T. (Eds.) Oxford Principles of European Union Law. Volume I: The European Union Legal Order. Oxford: Oxford University, 2018, p. 119*]. At the same time, pursuant to Article 68 (2) of the *Satversme*, the loyalty between the Member states must reinforce democracy. Respecting the European Union law, which reinforces democracy, falls within the scope of the principle of good legislation, thus facilitating adoption of sustainable legal regulation.

Article 3 (1) of the Treaty on the European Union provides that the Union's aim is to promote peace, its values and the well-being of its peoples. Pursuant to the 2nd recital in the Preamble to the Data Regulation, this Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and progress, to the strengthening of and the convergence of the economies within the internal market, and to the well-being of natural persons.

Moreover, the Court of Justice of the European Union has recognised with respect to the principle of loyalty between the Member States that the obligation of a Member State, to which the directive is addressed, to refrain from taking any measures during the period before the end of the period prescribed for transposition that could seriously compromise the result prescribed, follows from the principle of loyalty between the Member States (*see Judgement by the Court of Justice of the European Union of 18 December 1997 in Case C-129/96*,

Para 45, and Judgement of 10 November 2005 in Case C-316/04, Para 42). This duty is even more applicable to the period when a regulation, which has not become applicable yet, has entered into force.

The period when the Data Regulation had entered into force but had not become applicable yet had been granted to Member States to introduce legislative measures needed to ensure alignment of the national legal provisions with the provisions of the European Union law and get ready to apply the legal provisions of the European Union. From the moment when the Data Regulation entered into force, persons acquired the right to expect that the Data Regulation would become applicable within the term defined in Para 2 of its Article 99. In the course of adopting the contested provisions, the *Saeima*, abiding by the principle of loyalty between the Member States of the European Union, also had to take into account that application of the Data Regulation to matters concerning personal data processing, *inter alia*, those defined by the contested provisions, would be inevitable.

Hence, the *Saeima* was obliged to examine, in the course of adopting the contested provisions, whether the legal regulation that it had envisaged would not jeopardise the attainment of the Union's aims, more specifically – would not jeopardise the application of the Data Regulation after it had become applicable.

18.4.2. It follows from Sub-para “c” of Para 1 of Article 6 and Para 3 of Article 6 of the Data Regulation that data processing is lawful if it is necessary for compliance with a legal obligation, defined in legal acts of the Member State. to which the controller is subject. These legal acts must comply with the aim of public interest and must be proportionate to the defined legitimate aim.

Pursuant to Sub-para “e” of Para 1 of Article 23 of the Data Regulation, the principles of data processing, included in its Article 5, may be restricted by legislative measures to guarantee attainment of important objectives of general public interest of the Union or of a Member State. Whereas pursuant to, *inter alia*, Sub-para “b”, “d”, “f” and “g” of para 2 of Article 23 of the Data Regulation, these legislative measures must include, at least, rules on the safeguards to prevent abuse or unlawful access or transfer, the storage periods

and other applicable safeguards, taking into account the nature, scope and purposes of the processing or categories of processing, as well as the risks to the rights and freedoms of data subjects.

Pursuant to the principle of good legislation, due legislative procedure also means that the *Saeima*, in adopting new legal provisions, must also examine compliance of these provisions with the European Union law, which has entered into force but has not become applicable yet. Hence, in the course of adopting the contested provisions, the *Saeima* had to examine the compliance of the contested provisions with the requirements of the Data Regulation. Although, at the moment when the contested provisions were adopted, these obligations were not yet binding upon the *Saeima*, pursuant to the principle of good legislation, it had the duty to examine, in the course of adopting the contested provisions, *inter alia*, the categories of personal data, safeguards to prevent abuse of data or unlawful access or transfer, as well as periods of storage and other applicable safeguards, taking into account the nature, scope and purposes of the processing or categories of processing, as well as the risks to the rights and freedoms of data subjects. Such assessment was necessary to allow anyone to gain confirmation that the measure chosen by the *Saeima* (in the present case – adoption of the contested provisions) was not such that would jeopardise the attainment of the Union’s objectives. However, it follows from the materials in the case that the *Saeima* had not examines the compliance of the contested provisions with the Data Regulation and their mutual alignment.

18.5. The Constitutional Court recognises and it follows from the materials in the case that principle of good legislation had not been complied with in the course of adopting the contested provisions. These violations in the present case, in particular, in their conjunction, should be recognised as being substantial. Not every procedural violation is sufficient grounds for considering that the adopted act is legally void. To recognise a legal act void due to a procedural violation, there should be valid doubts that if the procedure had been complied with a different decision would have been made [*see Judgement by the Constitutional Court of 13 July 1998 in Case No. 03-04(98), Para 3 of the*

Findings]. The Constitutional Court has valid doubts and it notes that if the legislator, in the legislative procedure, had examined the objections expressed by the President regarding the restriction on fundamental rights, included in the contested provisions, as well as opinions expressed by the Legal Bureau of the *Saeima*, the Ministry of Justice, the Data State Inspectorate and the Association of Data Protection Specialists regarding incompatibility of this restriction, in terms of its content, with the right to inviolability of private life, a different decision would have been adopted as the result of the legislative process.

Hence, the restriction on fundamental rights, included in the contested provisions, has not been established by a law, adopted in due procedure, and the contested provisions are incompatible with Article 96 of the *Satversme*.

19. Pursuant to Section 32 (3) of the Constitutional Court Law, a legal provision that has been recognised by the Constitutional Court as being incompatible with a superior legal provision must be recognised as being void from the date when the Constitutional Court's judgement is published, unless the Court has provided otherwise.

However, in a democratic state governed by the rule of law, the principle that a legal provision that has not been adopted in due procedure cannot cause legal consequences is respected (*see Judgement by the Constitutional Court of 12 April 2018 in Case No. 2017-17-01, Para 24*). Hence, the contested provisions become void as of the date they entered into force.

The Substantive Part

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

held:

to recognise Para 1 and Para 2 of Section 3 (9²) of the law “On Remuneration of Officials and Employees of State and Local Government Authorities” as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia and void as of the moment they entered into force.

The judgement is final and not subject to appeal.

The judgement shall enter into force on the day it is published.

Chairperson of the court hearing

I. Ziemele