



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Case No. 2015-18-01

16 June 2016, Riga

The Constitutional Court of the Republic of Latvia comprised of: chairman of the court sitting Aldis Laviņš, Justices Kaspars Balodis, Gunārs Kusiņš, Uldis Ķinis, Sanita Osipova, Daiga Rezevska and Ineta Ziemele,

having regard to the application by the Ombudsman of the Republic of Latvia,

on the basis of Article 85 of the *Satversme* [Constitution] of the Republic of Latvia and Para 1 of Section 16, Para 8 of Section 17 (1), and Section 28¹ of the Constitutional Court Law,

at the court sitting of 17 May 2016 examined in written procedure the case

“On Compliance of Section 5¹ of “Maintenance Guarantee Fund Law” with Article 96 of the *Satversme* of the Republic of Latvia”.

The Facts

1. On 17 June 2004 the *Saeima* [Parliament] adopted “Maintenance Guarantee Fund Law” (hereinafter – the Fund Law), which entered into force on 1 July 2004.

Pursuant to Section 2 of the Fund Law, the purpose of this Law is to ensure implementation of the right of a child to social security by establishing the Maintenance Guarantee Fund for disbursement of minimum child support.

Pursuant to Para 2 of Section 1 of the Fund Law, “submitter”, in the meaning of this Law, is a natural person, who has custody over a child and who has submitted a submission regarding disbursement of child support to the Administration of the Maintenance Guarantee Fund (hereinafter also – Administration of the Fund), if this person permanently resides and has a declared place of residence in the Republic of Latvia.

Whereas pursuant to Para 3 of this Section, “debtor” is a parent, who has been obligated to pay child support to his or her child by a court adjudication or by a notarial deed, which comprises an agreement on regular child support payments and is enforceable in the procedure for enforcing court adjudications, and who does not perform this obligation or does not provide the minimum amount of child support, which the Cabinet has determined on the basis of Section 179(5) of the Civil Law.

With the law of 30 October 2014 “Amendments to Maintenance Guarantee Fund Law”, which entered into force on 29 November 2014, the *Saeima* added to the Fund Law Section 5¹, expressed as follows:

“(1) The Administration of the [Maintenance Guarantee] Fund shall publish the information about the debtor (name, surname, the second part of the personal identity code and the year of birth) on the homepage of the Fund’s Administration, if:

- 1) the submitter has agreed to it and the Fund’s Administration has not received information from state or local government institution that the publishing of the respective data could harm the interests of the child;
 - 2) the debtor is not a disabled person or a person, who, due to temporary loss of capacity for work, has not worked for more than six months, and the incapacity for work has been discontinued, or one year within the period of three years, when the incapacity for work reoccurs intermittently;
- (2) Information about the debtor shall be published with the aim of protecting the rights of the child and promoting fulfilment of parents’ obligation – paying the child support, as well as responsible and honest fulfilment of commitments.

(3) The Cabinet of Ministers shall establish the procedure, in which the Fund's Administration shall publish and delete information on a debtor.”

Pursuant to Para 10 in the Transitional Provisions of the Fund Law, the Administration of the Fund publishes information about the debtor, referred to in Section 5¹ (1) of this Law, from 1 July 2015.

2. The applicant – the Ombudsman of the Republic of Latvia (hereinafter – the Ombudsman) – holds that Section 5¹ of the Fund Law (hereinafter – the contested norm) is incompatible with the words “everyone has the right to inviolability of his or her private life” of Article 96 of the *Satversme* of the Republic of Latvia (hereinafter – the *Satversme*).

After the contested norm entered into force the Ombudsman, by the letter of 12 March 2015, turned to the institution, which adopted the contested act, – the *Saeima*, asking it to revoke the contested norm by 25 May 2015. The *Saeima* did not respond to this letter, neither did it eliminate the shortcomings referred to therein.

The Ombudsman notes that publishing the data of the Fund's debtors is a restriction upon persons' private lives. The legitimate aim of this restriction is protection of public welfare, manifested as the protection of the rights of the child and facilitating performance of parental duties. Channelling of substantial resources of the state budget for covering civil law commitments of debtors of child support is said to be incompatible with public interests.

The restriction established by the contested norm is said to be inappropriate for reaching the legitimate aim. In difference to the example of the Estonian legal regulation, referred to in the course of adopting the contested norm, the Fund's debtors predominantly are persons, who have been recognised as being unable to pay the support as adjudicated by the court in procedure established in regulatory enactments.

The contested norm established an exemption only with respect to one group of debtors, who objectively are unable to pay the support, i.e., with

respect to persons, who do not work due to their incapacity for work. Allegedly, the contested norm does not provide for exemptions with respect to other persons, who have no money for paying maintenance, neither does it envisage an individual assessment of whether, for example, there are basically subjective or objective reasons for long-term unemployment of the person. Publication of the data of such persons should be considered as being solely stigmatisation and public humiliation of the less-qualified part of society, which does not help to improve the material status of these persons and does not facilitate making the child maintenance payments.

Improvements in fulfilling the duty of making maintenance payments that have been achieved, allegedly, cannot be unequivocally linked to the fact that the contested norm entered into force. Level of remuneration increased in 2015, and this is said to promote official employment of persons and growing prosperity.

The right to access a debtor's data should be granted only to persons, who need this for their work. The Cabinet Regulation No. 781 of 20 November 2007 "Procedure for Registering Persons, to whom Maintenance Payments have been Disbursed from the Maintenance Guarantee Fund, and Debtors, as well as Providing Information on these Persons", which currently is no longer in force, had established a sufficiently wide range of such persons. At present this matter is regulated by the Cabinet Regulation of 6 January 2015 No. 5 "Procedures for Registering Submitters and Debtors of the Maintenance Guarantee Fund" (hereinafter – Regulation No. 5). The outcome of making the data of maintenance payment debtors accessible to any person is that data processing exceeds the necessary scope and is not linked to the purpose established for it.

Allegedly, the legitimate aim of the contested norm could be achieved by other measures, less restrictive upon a person's rights, by implementing measures to promote inhabitant's solvency and ensuring more effective application of Section 170 of the Criminal Law, which envisages making a

person criminally liable for avoiding in bad faith caring for and providing maintenance to his children.

The restriction on fundamental rights established by the contested norm is said to be inadequate. The contested norm does not directly affect the child's right to receive maintenance, since it is ensured from an independent source of financing. Thus, in fact, a balance is maintained between society's economic interests and the rights of maintenance payment debtors, not between two fundamental rights.

Protection of personal data is of fundamental importance in respecting a person's right to private life. The State's discretion in restricting such rights is said to be narrower. The contested norm places disproportional restrictions upon the integrity of some persons, *inter alia*, by envisaging making public information that is disgracing to a person contrary to a person's will and irrespectively of a person's objective possibilities to prevent circumstances, upon which publication of this information is based.

Even assuming that the contested norm had partially facilitated fulfilling the obligation to make maintenance payments, the State power may not use any measures, but only such that are absolutely necessary and proportional to the purpose of restricting a person's fundamental rights. Also in those cases, where a person due to subjective reasons fails to perform an obligation imposed upon him by law and a court's ruling, the State must assess in a detailed way and substantiate the need for making a person's data public, because standards of human rights apply also to an offender.

Re-publishing of data and use of data for dishonest purposes would create even greater risks of violating persons' rights that exceeds third persons' interest in these data. The larger the scope of published personal data, the greater the interference into a person's private life is. Publishing of data that identify persons may lead to subsequent illegal processing of these data. Moreover, in the Internet environment information cannot be deleted irreversibly, because any person may download it.

Likewise, the contested norm does not ensure the right of a data subject, defined in Section 15 of the Personal Data Protection Law, to receive information about persons, who have received his personal data. Each instance, when these personal data are consulted, gives the data subject the right to be informed about recipients of this information.

Publishing of the maintenance payment debtor's data affects not only his own, but also his child's right to private life. Information that might in any way be harmful to the child's future development or maintenance of psychological balance cannot be disclosed. The contested norm allows disclosing information that the child's parents have had disputes over the child's maintenance, that one of the parents refuses to fulfil voluntarily a court's judgement, and that the State is making maintenance payments instead of him. If information like this comes at the disposal of third persons, it can cause adverse consequences for the child, for example, by subjecting him to risk of emotional abuse or social exclusion.

Moreover, it is also possible that due to domestic disputes submitters are not always objective and will not act in accordance with the child's interests. The very fact of publishing information may inflict harm upon the child, whereas public and local government institutions will not have information about the possible harm before publishing information, and they would be able to inform the Fund's administration only after the child's rights had been infringed upon. Thus, the contested norm does not provide for a preventive mechanism.

While the contested norm was drafted, the influence that the published information would leave upon the members of the debtor's new family, *inter alia*, children, had not been assessed at all. In such cases the previous spouse cannot be deemed to be a person able to assess objectively the possible harm inflicted upon the debtor's children, who have been born in the subsequent marriage. The contested norm does not define a specific state institution, which would have the obligation to assess possible harm inflicted upon the child's interests prior to publishing the data.

The fact that the submitter may request at any time deleting the debtor's data that have been made public is to be assessed positively. However, there are grounds for concern that the submitter will require deletion of the data only after having established harm inflicted upon the child's interests; moreover, a child could be subjected to emotional abuse also in the future.

3. The institution, which issued the contested act, – the *Saeima* – does not uphold the Ombudsman's opinion and holds that the contested norm complies with Article 96 of the Satversme.

The *Saeima* notes that the Ombudsman has not contested compliance of the contested norm with the right to inviolability of home and correspondence, enshrined in Article 96 of the Satversme, therefore only compliance of the contested norm with a person's right to private life should be examined in the case.

The *Saeima* agrees that the contested norm restricts persons' right to private life. It is not disputed in the case under review that the aforementioned restriction had been established by a law that had been adopted in due procedure, is worded with sufficient clarity and is publicly accessible.

In addition to the purpose indicated in the contested norm, publishing of debtors' data is said to have also a preventive purpose – decreasing the number of persons who are not making maintenance payments in the future, as well as informing society about those persons, whose civil law liabilities are fulfilled by spending substantial state budget resources for this purpose. The contested norm is said to protect the rights and interests of a child to receive from his parents financial support that is necessary for his development. Thus, the purpose of the contested norm complies with such legitimate aims as public welfare and protection of other persons' rights.

In drafting the contested norm, the legislator had to find a reasonable balance between protecting rights of the child and society and protecting the rights of the parent, who does not perform the obligation of maintaining his child. In those cases, where the legislator must ensure a reasonable balance

between competing fundamental rights of individuals, the legislator is said to enjoy certain discretion.

The practice of different countries in the field of data protection may vary. Therefore in the case under review, in assessing the measure chosen by the legislator for reaching the legitimate aim, Latvia's specific legal and social context should be taken into consideration.

The contested norm had been necessary, since the number of those persons, who did not fulfil the obligation of making maintenance payments, had been constantly growing. To provide for the children the means necessary for their development is said to be primarily the obligation of a child's parents, irrespectively of their means. Parents' have the responsibility to do everything possible to provide to their child means of subsistence. Regretfully, more than two thirds of the Fund's debtors are working-age persons, who do perform their monthly obligation to make the minimum maintenance payment to one's child. However, the legislator has recognised that there are also such groups of persons, who due to their health condition are unable to ensure that maintenance payments to their children are made.

The fact that pursuant to Para 7.³ 6 of Regulation No. 5 the debtor's data are deleted as of the moment, when he makes the regular payment, disregarding whether he has or has not repaid the whole debt, is said to be significant.

It is noted in the explanatory report to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance of 23 November 2007 (hereinafter – the Hague Convention) that the list included in Article 34 is not exhaustive and only illustrates the measures that a state could use to fulfil the obligation to collect maintenance payments. Measures that exert pressure upon the debtor, by this indirectly forcing him to make the respective payments, are said to be permissible.

The restriction upon fundamental rights that the contested norm comprises is said to be appropriate for reaching the legitimate aim. Information

provided by the Fund's Administration proves that after the contested norm was adopted and the debtor's data were published significant improvements in performing the obligation of making maintenance payments had been observed.

The Ombudsman has pointed to such measures that would be less restrictive upon a person's rights and would allow reaching the legitimate aim in the same quality, being more sparing to a child's interests. Applying criminal punishment for avoiding maintenance of a child in bad faith would be one of possible ways to motivate debtors; however, it should not be the main measure for reaching the aim. Imposing a sanction like this upon a child's parent could leave a negative impact not only upon the child, but also the debtor's ability to compete in labour market.

In the course of drafting the contested norm the effectiveness of mechanisms envisaged by laws at that time had been assessed, and this had led to the conclusion that they were not effective enough to provide incentives for debtors to make maintenance payments. The fact that debtors are often employed illegally or that the property they actually own legally is the property of other persons should also be taken into account. Thus, allegedly, there are no other measures, less restrictive upon a person's rights, which would allow reaching the legitimate aim in the same quality.

Information about a debtor that is published, as well as the procedure for updating and deleting it is said to comply with the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and Personal Data Protection Law.

In assessing, whether the restriction upon fundamental rights that the contested norm comprises is appropriate, it should be taken into consideration that pursuant to the contested norm information about persons, who are not fulfilling obligation imposed upon them by law and a court ruling, is published. It is in the interests of a child not only to receive financial resources irrespectively of the source, but also to be aware that parents have chosen to provide these resources to him. It should be also taken into account that

considerable state budget resources are used to cover debtors' civil law liabilities, and, thus, not only the public interest in the use of these resources is valid, but also in developing such mechanisms that would decrease the amount of these resources. Thus, benefit to society exceeds the harm inflicted upon a debtor's rights.

Information about a debtor that is published *per se* cannot be considered as such that would be detrimental to a child's interests. The possibility of harm should be assessed on case-by-case basis. Pursuant to national and international legal acts assessment of this kind first and foremost is the obligation of the parent, who has custody over the child. Moreover, the parent who lives together with the child can make the best possible assessment of whether publication of information would leave a negative impact upon the child.

In the course of drafting the contested norm the legislator took into consideration concerns expressed by the Ombudsman and included in the contested norm the provision that information about a debtor should not be published, if state or local government institutions have provided information that publication of these data might harm a child's interests. This provision was specified in Regulation No. 5. Thus, in drawing up the contested norm, the legislator has taken into consideration the best interests of a child and ensured an appropriate mechanism for safeguarding these interests.

4. The summoned person – the Ministry of Justice – holds that the contested norm complies with Article 96 of the *Satversme* and supports the arguments presented in the written reply by the *Saeima*.

Parents' obligation to care for their children is not only of regulatory nature, it is said to be linked also to protection of the State's fundamental values included in the Preamble to the *Satversme*. The majority of debtors do not provide to their children even the minimum amount of maintenance payments defined in the state. Thus, the contested norm has a legitimate aim – protection of other persons' rights. Moreover, these other persons are minors and financially dependent upon the person, whose rights are restricted.

The purpose of Regulation No. 5, pointed out by the Ombudsman, with respect to issuance of debtor's data, is said to differ significantly from the purpose for which information about a debtor is published. I.e., Regulation No.5 provides the possibility to certain persons to evaluate a debtor's solvency, whereas the contested norm is aimed at protecting the rights of the child and facilitating that parents' obligations are performed. Publicity is said to be the main factor that allows reaching the aim of the contested norm, without ungrounded restriction upon the debtor's legal interests, for example, with respect the right to freely choose his vocation, to conclude business transactions, and the like. Moreover, other countries have also chosen this solution as being sufficiently effective. Criminal proceedings, in turn, should be used as the last coercive measure, since it has much stronger influence upon the debtor's future life compared to publishing of his data. Possible short-term deprivation of liberty, *inter alia*, could restrict the parents' and the child's right to access, which would be contrary to the child's interests.

A discussion that lasted for a couple of years led to the conclusion that other solutions to the problem that maintenance payments were not made could impose disproportional restrictions upon persons' fundamental rights, as well as jeopardize a debtor's ability to gain income, and that would not be in the interests of a child. The contested norm is said to violate a debtor's interests and rights as little as possible, but is reaching its purpose in a sufficient degree. Hence, the aim has been reached by adopting the contested norm, since the resources recovered from debtors are increasing.

Pursuant to Regulation No. 5 state and local government institutions may submit information that publication like this would harm the child's interests before the respective data are published. Before publishing the data, the Fund verifies for the first time, whether such information exists. In practice there have been cases, where information has been deleted upon establishing that it violates interests of a debtor's other children.

5. The summoned person – Administration of the Maintenance Guarantee Fund – provides statistical data on debtors, changes in the number of applications requesting disbursement of maintenance payments, maintenance payments disbursed to submitters and to be recovered in the procedure of recourse, as well as other information.

The Fund's Administration highlights, in particular, that legal regulation is favourable to those debtors, who are unable to perform their obligation to support their child due to disability or protracted incapacity to work, or who are making the effort to do their duty, although their debt to the Fund has not been repaid in full.

However, the summoned person underscores that parents' obligation to maintain their child until the moment when he is able to provide for himself, defined in Section 179 of the Civil Law, is absolute. Regulatory enactments do not envisage cases, where parents could be released from the obligation to provide maintenance to the child at least in the minimum amount defined by the Cabinet. The contested norm is said to have a preventive function, fostering by legal means parents' interest in doing everything possible to fulfil their duty imposed by law to maintain the child.

It is impossible to assess objectively the impact of the contested norm upon the amount of disbursed maintenance payments, since it is influenced not only by the number of submitters, to whom maintenance payments have been disbursed, and the number of applications received, but also by other factors. Moreover, the number of applications with respect to disbursement of maintenance payments is said to depend not solely upon application of the contested norm. However, the contested norm is said to have a positive impact upon the amount of maintenance payments recovered in the recourse procedure. Currently debtors are more active in performing their obligation to provide maintenance, and therefore submitters need to receive maintenance payments from the Fund less frequently.

6. The summoned person – the State Inspectorate for Protection of Children’s Rights – holds that the contested norm complies with Article 96 of the *Satversme*.

Assessment of the content of published information allows concluding that a debtor’s child can be identified by a very limited circle of persons connected to this child (for example, some employees of particular institutions, who might have at their disposal the debtor’s full personal identity code). The debtor, in turn, could be identified by some relatives of the child, who know his year of birth and who have at their disposal information about the debtor’s children. Therefore the risk that the debtor’s child could be identified is said to be minimal. Whereas the risk that the child’s right to private life and inviolability of a person (for example, that the child could be humiliated due to his parent’s indebtedness) is said to be very low. The contested norm itself comprises a number of provisions that significantly decrease risks of the child’s rights being jeopardized.

Pursuant to provisions of national and international legal acts, children should be ensured special legal protection and the rights and interests of the child should take priority within the state. Both parents are equally responsible for upbringing and development of the child.

It is the task of public administration to take all possible measures to perform the obligation established in Article 27 of the Convention on the Rights of the Child to recover maintenance for the child from the parents or other persons having financial responsibility for the child.

Publication of parents’ personal data facilitated performance of parental obligations, therefore also reaching the legitimate aim of the contested norm. Restrictions upon a person’s private life established by the contested norm are said to be proportional and intended to ensure that the rights of the child are respected.

The State Inspectorate for Protection of Children’s Rights informs that it did not provide an opinion on the contested norm.

7. The summoned person – the Data State Inspectorate – in accordance with information at its disposal assumes that the contested norm is incompatible with Article 96 of the *Satversme*.

The summoned person draws attention to conclusions made by the Working Party on Article 29 of the 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 in its Opinion No. 01/ 2014 of 27 February 2014.

With respect to data processing, the proportionality of restrictions upon fundamental rights must be regularly reviewed to have the certainty that the causes that were used to substantiate the particular solution to a problem are still relevant. Certain flexibility can be identified with respect to data protection; therefore also culture related aspects can be taken into consideration.

It cannot be established that in the course of drafting and adopting the contested norm it was assessed, whether the problem could not be solved by other measures indicated in the annotation to the draft law (withholdings from the debtor's remuneration for work, bank accountants, tax refunds; informing credit history bureaus; denial, suspension or revocation of various licences, etc.). Such measures would be less restrictive upon a person's right to protection of his data. In the course of adopting the contested norm only the general statement that the selected solution was the most appropriate had been highlighted. An approach like this is said to be incompatible with the case law of the European Court of Human Rights (hereinafter – ECHR) and the Court of Justice of the European Union.

It is questioned, whether the benefit that application of the contested norms grants to society exceeds the restriction upon fundamental rights of particular persons. Publishing of personal data on the Internet is said to open up extensive possibilities for unlawful use of these data in the future, and, thus, is a much more significant restriction upon a person's fundamental rights than exchange of personal data between two persons. Application of the contested

norm is said to have the outcome that on the respective Internet site personal data of several thousand natural persons are available and can be searched by Internet browser. In such a case all rights of data subjects included in Section 15 of Personal Data Protection Law cannot be ensured. Thus, the contested norm significantly restricts the right to personal data protection, and a restriction like this could be justified only by incontestable benefit gained through it.

The harm inflicted upon a child's rights caused by publishing of personal data cannot always be predicted. In assessing the impact of the contested norm upon respecting the interests of the child it should be taken into consideration on how many occasions state and local government institutions have informed the Fund's Administration that publishing of respective information could harm the child's interests. It is said to be impossible to verify, within the framework of the case under review, whether application of the contested norm ensures that its purpose is reached and that it provides for urgent social needs.

8. The summoned person – association “LATVIAN CENTRE FOR HUMAN RIGHTS” – notes that the purpose of the contested norm is to recover state budget resources by urging parents to do their duty – to provide for their children. However, there are certain doubts as to whether the contested norm is genuinely aimed at ensuring the best interests of a child.

The contested norm restricts a debtor's right to private life. It should be taken into account that with respect to a debtor personal data protection is not an absolute requirement. However, the contested norm is said to affect also a child's right to private life; i.e., the possibility that any person, by making certain effort, could obtain information about the debts of a child's parents, is very big. Thus, in connection with the contested norm the principle of the best interests of a child should be taken into consideration.

The contested norm has been in force for a short period of time, and in-depth analysis of statistical data would be required to conclude, whether it has direct causal link to the improved indicators of maintenance recovery.

In the course of adopting the contested norm the legislator has referred to effective measures for collecting maintenance indicated in Article 34 of the Hague Convention, but did not analyse these on their merits. Making a parent criminally liable, in turn, would not ensure that a child receives the needed maintenance.

Mechanisms included in the contested norm do not guarantee the possibility to assess, before publishing the data, the risks with respect to the child's interests linked to this publication. It is also not clear, why with respect to the amount of published data the legislator has not chosen the same approach as with respect to insolvency register, where a part of the personal identity code or the year of birth is not published.

In the case under review at least three different interests are affected – protection of the debtor's data, the best interests of a child in the context of protection of private life, as well as the State's interest in recovering budget resources. Since the primary aim of the contested norm is recovery of state budget resources and not increasing the amount of maintenance to be disbursed to the child or urging parents to pay money directly to their children, the public benefit that is gained is said not to exceed harm inflicted upon individuals. The contested norm is based only upon economic considerations of the State, which *per se* do not constitute sufficient grounds for restricting an individual's rights, in particular, if other alternative measures have not been duly considered.

9. The summoned person – certified personal data protection specialist LL.M. Dace Indāne – notes that the contested norm does not violate the debtors' of maintenance payments right to protection of personal data and complies with Article 96 of the *Satversme*.

The right to personal data protection should be differentiated from the right to inviolability of private life. Although protection of personal data to a

large extent overlaps with the right to inviolability of private life, it does envisage more extensive application and different criteria for the rights of the State to impose restrictions upon them. In the case under review, compliance of the contested norm with the *Satversme* should be examined in the context of the right to data protection, without assessing other possible restrictions upon private life.

If personal data of natural persons are processed in compliance with the fundamental principles of data processing defined in national and international regulatory enactments (personal data are processed in good faith and lawfully; data processing in compliance with the purpose and in the necessary scope; term of storing data that does not exceed the period set for the purpose; accuracy, timely updating, correction or deletion of data), then such data processing is to be considered as being lawful and such that does not violate persons' rights to protection of their data. Proportionality of data processing is also examined in the framework of analysing these principles. Upon establishing that data processing is intended contrary to fundamental principles of data processing, it must be assessed, whether the respective restriction has been established by law, whether it has a legitimate aim, and whether it is proportional.

Moreover, debtors have not been prohibited from exercising the right established in Section 16 of the Personal Data Protection Law, on the basis of their individual situation, to request that their personal data are corrected, processing thereof is terminated or that the data are destroyed, if the personal data are incomplete, outdated, false, have been illegally processed or are no longer necessary for the purpose for which they were collected.

Findings

10. The Ombudsman requests reviewing compliance of the contested norm with words in Article 96 of the *Satversme*: “Everyone has the right to

inviolability of his or her private life [..].” To establish, whether the contested norm applies to fundamental rights defined in Article 96 of the *Satversme*, the Constitutional Court must first of all reveal the scope of this Article.

In interpreting the right to private life guaranteed in Article 96 of the *Satversme*, the Constitutional Court has noted that this right comprises various aspects. The right to private life means that an individual has the right to his private space, suffering minimum interference by the State or other persons. It protects an individual’s physical and mental integrity, dignity and respect, identity, and personal data. Information about a person is part of the content of this concept (*see Judgement of 26 January 2005 by the Constitutional Court in Case No. 2004-17-01, Para 10, and Judgement of 14 March 2011 in Case No. 2010-51-01, Para 13*).

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 purpose is to harmonise provisions on human rights included in the *Satversme* with the provisions of international law. Norms of international human rights that are binding upon Latvia and the practice of applying thereof on the level of constitutional law serve also as a means of interpretation to establish 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 included in the *Satversme* (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Findings*).

The Republic of Latvia has assumed international commitments the purpose of which is protection of a person’s private life, *inter alia*, of personal data.

The first part of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) provides that everyone has the right to respect for his private and family life. ECHR, in interpreting Article 8 of the Convention, has recognised that the

concept of “private life” has broad scope, it covers various aspects in a person’s physical and social identity, and that it cannot be defined exhaustively. Information about a person and protection of his data fall within the scope of the right to protection of private life. Protection of personal data is decisive in allowing a person to exercise his rights established in Article 8 of the Convention (*see Judgement by the Grand Chamber of ECHR of 16 February 2000 in Case “Amann v. Switzerland”, application No. 27798/95, Para 65, and Judgement of 4 December 2008 in case “S. and Marper v. the United Kingdom”, applications No. 30562/04 and No. 30566/04, Para 66 and Para 103*). The right to inviolability of private life and protection of personal data has been enshrined also in Article 7 and Article 8 of the Charter of Fundamental Rights of the European Union.

The Constitutional Court, in establishing the content of fundamental rights defined in Article 96 of the *Satversme* in interconnection with Article 8 of the Convention, has already recognised that state institutions have not only a negative obligation to abstain from any unfounded interference into the right to inviolability of private life, but also a positive obligation to take necessary measures to protect these rights. The legislator must set up such a mechanism for protection of personal data that would ensure that rules on processing would comply with the intended purpose (*see Judgement of 12 May 2016 by the Constitutional Court in Case No. 2015-14-0103, Para 23.3.2*).

Processing (collecting, storing, disclosing) data that are linked to a person’s private life or characterizes a person’s physical or social identity falls within the scope of a person’s right to inviolability of private life (*see Judgement of 12 May 2016 by the Constitutional Court in Case No. 2015-14-0103, Para 15.1*).

Thus, the right to inviolability of private life defined in Article 96 of the *Satversme* includes also protection of a natural person’s data.

11. In the case under review the Constitutional Court must establish, whether the contested norm restricts a person’s fundamental rights defined in

Article 96 of the *Satversme*. In the case different opinions have been expressed with respect to persons, to whom the contested norms apply.

11.1. Participants of the case and a number of summoned persons agree that the contested norm comprises a restriction upon the fundamental right of a maintenance payment debtor, established in Article 96 of the *Satversme*.

Upon establishing signs of dispositional hypothesis, the Fund's Administration publishes information about a debtor (name, surname, the second part of the personal identity code, and the year of birth) on its homepage.

Regulation on personal data protection is specified in the Personal Data Protection Law. Para 3 of its Section 2 provides that personal data is any information related to an identified or identifiable natural person. Whereas pursuant to Para 4 of this Section, personal data processing is any operation carried out regarding personal data, including data collection, registration, storing, arrangement, transformation, using, transfer, transmission and dissemination, blockage or erasure.

Thus, information about a debtor referred to in the contested norm is personal data, and publishing of such data on the homepage of the Fund's Administration is processing of personal data.

Moreover, the data mentioned above are to be recognised as being such that identify the debtor as a natural person and are linked to a person's personal life. Processing (publishing) of such personal data on behalf of the State is interfering into a person's private life.

Thus, the contested norm restricts a debtor's right to inviolability of private life established in Article 96 of the *Satversme*.

11.2. The Ombudsman underscores that by publishing information about maintenance debtor, not only his, but also his child's right to inviolability of private life, established in Article 96 of the *Satversme*, is affected. The summoned persons Data State Inspectorate and association "LATVIAN CENTRE FOR HUMAN RIGHTS" also point to this.

The content of information defined by the contested norm allows other persons, who have at their disposal the full of partial debtor's personal identity code and information about his children, to obtain information of certain degree of credibility about the debtor's children, *inter alia*, also to identify them. Such persons may be, for example, relatives of the debtor's children or debtor's acquaintances, who know his year of birth.

Such information might indicate to third persons that the child's parents have had a dispute regarding the child's maintenance, and that one of them refuses to fulfil a court judgement voluntarily and that maintenance is paid by the State instead of him. Thus, possible identification of a debtor's child in accordance with the contested norm may lead to processing of such data that are related to the private life of the debtor's child.

The Constitutional Court has recognised that the rights of a child are affected not only in those cases, when a decision pertaining directly to him must be adopted, but also in cases, where the adopted decision may be attributed to the child or affect him indirectly. Also in those cases, where the decision does not target the child, but could affect him, the principle that the interests of the child have the priority must be complied with (*see Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 11*). The indicated possible impact of the contested norm upon the fundamental rights of the debtor's child established in Article 96 of the *Satversme* is sufficient for the Constitutional Court to establish that such fundamental rights of the child are restricted, since the contested norm may affect him.

Moreover, the case materials show that the Fund's Administration has received requests to delete a debtor's data from the public list, since their public accessibility could harm the interests of the debtor's child (*see Case Materials, Vol. 1, p. 195*). Thus, the contested norm causes situations, where publication of a debtor's data affects the child's right to inviolability of private life established in Article 96 of the *Satversme*.

Therefore the contested norm restricts the rights of a debtor's child to inviolability of private life established in Article 96 of the *Satversme*.

12. The right to inviolability of private life may be restricted, but it must be verified, whether the restriction is justifiable, i.e., whether: 1) it has been established by law; 2) it has a legitimate aim; 3) it is proportional (*compare, for example, Judgement of 26 January 2005 by the Constitutional Court in Case No. 2004-17-01, Para 11*).

13. To assess, whether the restriction upon fundamental rights has been established by law, it must be verified:

- 1) whether in adopting the law the procedure established by regulatory enactments was complied with;
- 2) whether the law has been promulgated and is publicly accessible in compliance with provisions of regulatory enactments;
- 3) whether the law is worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and would be able to predict the consequences of application thereof (*see Judgement of 2 July 2015 by the Constitutional Court in Case No. 2015-01-01, Para 14, and Judgement of 12 May 2016 in Case No. 2015-14-0103, Para 19*).

The contested norm is included in the Fund Law and is publicly accessible in accordance with provisions of regulatory enactments. The case under review does not comprise a dispute on whether the contested norm had been adopted and promulgated in procedure established by the *Satversme* and the *Saeima* Rules of Procedure and whether it has been worded with sufficient clarity, so that a person would be able to understand the content of rights and obligations following from it and would be able to predict the consequences of application thereof.

Thus, the restriction upon fundamental rights that follows from the contested norm has been established by law.

14. All restrictions upon fundamental rights must be based upon circumstances and arguments regarding its necessity, i.e., the restriction has been established for important interests – a legitimate aim (*see, for example, Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 9*).

It is indicated in the contested norm that information about debtor is published with the aim of protecting the rights of a child and facilitating performance of parental obligation – making maintenance payments, as well as meeting of commitments in a responsible way and in good faith.

If restrictions upon rights have been established, then in legal proceedings before the Constitutional Court the obligation to present and to substantiate the legitimate aim of such restrictions lies with the institution that issued the contested act, in the particular case – with the *Saeima* (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 12, and Judgement of 11 December 2014 in Case No. 2014-05-01, Para 18*). The *Saeima* notes that the restriction established by the contested norm has two legitimate aims: protecting society's welfare and protecting the rights of other persons, i.e., the rights of children (*see Case Materials, Vol. 1, p. 39*).

14.1. Article 110 of the *Satversme* provides: “The state shall protect and support marriage – a union between a man a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence”. Article 110 of the *Satversme* provides for, *inter alia*, protection of the rights of a child. A finding has been enshrined in the case law of the Constitutional Court that the State's obligation to establish and maintain a system for social and economic protection of the family derives from the first sentence of Article 110 of the *Satversme* (*see Judgement of 4 November 2005*

by the Constitutional Court in Case No. 2005-09-01, Para 9.3, and Judgement of 11 December 2006 in Case No. 2006-10-03, Para 13.1). Para 2 of Article 3 of the Convention on the Rights of the Child provides that such care and protection must be ensured to every child that is required for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her. To this end the State must take all appropriate legislative and administrative measures. Para 1 of Article 27 of this Convention emphasises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

Fundamental rights of the child that are defined by the *Satversme* are specified in Chapter II of Protection of the Rights of the Child Law. Section 7 of this Law provides that every child has an inalienable right to the protection of life and development. Whereas pursuant to Section 10(1) of Protection of the Rights of the Child Law a child has the right to such living conditions and benevolent social environment as will ensure his or her full physical and intellectual development. Every child must receive adequate nourishment, clothing and accommodation.

The Constitutional Court has already recognised that providing maintenance to a child at least in minimum amount every month is parental duty that follows from Section 179 of the Civil Law. Thus, a child's needs are provided for to ensure his full development in social environment, would not suffer hunger and would be provided with at least essential goods. Section 179 of the Civil Law refers also to the minimum amount of maintenance that each parent should provide for the child, irrespectively of their financial means. The minimum amount of maintenance is defined by the Cabinet of Ministers, in view of the subsistence minimum set in the state and the child's age (*see Judgement of 10 January 2011 by the Constitutional Court in Case No. 2010-18-01, Para 11*). Para 2-4 of Article 27 in the Convention of the Rights of the Child provide that parents bear the main responsibility for ensuring living conditions that are necessary for a child's development within the limits of

their abilities and financial possibilities. Whereas the State, in accordance with its circumstances and possibilities, takes appropriate measures to provide assistance to parents and other persons that are responsible for the child in exercising this right, and, if necessary, ensures material assistance and support programmes, in particular, with respect to food, clothes, and housing. Moreover, the State also takes all appropriate measures to ensure that maintenance is collected from parents or other persons, who are financially responsible for the child.

The State should facilitate primarily that the child receives maintenance required for his full development from his parents. Only in the case, where the parent does not provide these means to the child, the State should provide to the child temporary material support. The State has assumed this responsibility to comply with the provisions defined in the first sentence of Article 110 of the *Satversme* and the Convention on the Rights of the Child. Concurrently, the State must envisage a mechanism for recovering the disbursed maintenance payments from parents, who do not fulfil their obligation imposed by a court ruling to pay maintenance to their child.

14.2. Respecting the fundamental rights of children is also the aim of society as a whole. General public welfare can be ensured only if the State promotes full physical and intellectual development of persons, in particular, children.

Moreover, it should be taken into consideration that the Fund's financing mainly is made up by state budget subsidy and the financial resources recovered for the already disbursed maintenance. The resources for the Fund's Administration are envisaged in the law on the state budget for the current year as discrete programmes (sub-programmes). As soon as a parent is able to comply with the requirement of providing minimum maintenance to a child, the Fund's support is discontinued. Society is also interested in balanced contributions to and disbursements from the Fund; i.e., to recover as much of state budget resources that have been disbursed to cover the debtor's civil law liabilities as possible.

In the light of considerations expressed in Para 14.1 and Para 14.2 of this Judgement, it can be concluded that the contested norm is aimed at protecting the rights of a child; i.e., so that he would receive resources required for his development from the parents, as well as at protecting the welfare of society as a whole.

Thus, the restriction upon fundamental rights included in the contested norm has legitimate aims – protection of other persons’ rights and protection of public welfare established in Article 116 of the *Satversme*.

15. The Constitutional Court has concluded that upon establishing the legitimate aim of the restriction upon fundamental rights, its compatibility with the principle of proportionality must be reviewed, and thus, it must be established, whether:

first, measures used by the legislator are appropriate for reaching the legitimate aim; i.e., whether the contested norm allows reaching the legitimate aim of restriction;

secondly, whether such actions are necessary; i.e., whether the legitimate aim cannot be reached by other measures, less restrictive upon a person’s rights and lawful interests;

thirdly, whether the legislator’s actions are appropriate; i.e., whether the benefit gained by society exceeds the harm inflicted upon a person’s rights and lawful interests (*see, for example, Judgement of 9 January 2014 by the Constitutional Court in Case No. 2013-08-01, Para 12*).

16. In examining, whether a restriction upon fundamental rights is proportional, first of all it must be verified, whether the contested norm is appropriate for reaching the legitimate aim.

Participants of the case under review agree that the contested norm is one of those legal instruments that facilitate recovery of maintenance. Thus, the contested norm ensures protection to a child’s right to development. However,

in the case under review divergent opinions have been expressed on whether the contested norm is the only and the most essential cause of improvements achieved with respect to fulfilling the duty of paying maintenance.

Statistical data published by the Fund show that during the first four months of 2016 the recovery of disbursed maintenance payments had increased by 29 per cent compared to the first four months of 2015 (*see the Fund's statistics on maintenance payments recovered in recourse procedure. Accessible: <http://www.ugf.gov.lv>*). It follows from this statistics that application of the contested norm has facilitated better fulfilment of parent's obligation to maintain the child. Thus, the contested norm facilitates protection of children's right to development, since they receive maintenance from their parents. At the same time the contested norm also facilitates protection of public welfare, because it ensures that child's fundamental rights are respected, which is in the interests of society as a whole, as well as a balance between contributions to and disbursements from the Fund.

Hence, the measure chosen by the legislator is appropriate for reaching the legitimate aims.

17. Pursuant to the contested norm, a debtor's data are published on the homepage of the Fund's Administration. Thus, in further examining proportionality of the restriction upon fundamental rights included in the contested norm, the Constitutional Court will first of all assess the necessity of the legislator's actions and appropriateness with respect to restriction upon the debtor's fundamental rights established in Article 96 of the *Satversme*.

The restriction defined by the contested norm is necessary, if no other measures exist that would be as effective and the selection of which would restrict persons' fundamental rights to a lesser extent (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 19 of the Findings, and Judgement of 28 November 2014 in Case No. 2014-09-01, Para 20.2*).

Verification of whether no alternative measures that would violate the fundamental rights enshrined in the *Satversme* to a lesser extent is within the jurisdiction of the Constitutional Court. Likewise, the jurisdiction of the Court entails establishing, whether the legislator, in restricting fundamental rights of a person or group of persons, has duly assessed, whether in the particular case no alternative measure exist that would be less restrictive upon persons' fundamental rights established by the *Satversme* (see *Judgement of 15 April 2009 by the Constitutional Court in Case No. 2008-36-01, Para 15, and Judgement of 30 March 2010 in Case No. 2009-85-01, Para 19*).

The Ombudsman is focusing, in particular, upon the fact that the legitimate aim of the contested norm could be reached by other measures, less restrictive upon a person's fundamental rights (see *Case Materials, Vol. 1, p. 135*). The summoned person association "LATVIAN CENTRE FOR HUMAN RIGHTS" also pointed to this. The *Saeima*, in turn, notes that in the course of drawing up and examining the draft contested norm (see *draft law No. 1186/Lp11 submitted to the Saeima on 19 June 2014 "Amendments to the Law on Maintenance Guarantee Fund"*) both in the Cabinet and the *Saeima* extensive discussions were held on possible alternative solutions, which would allow reaching the legitimate aim of the contested norm, *inter alia*, a prohibition to use a vehicle, prohibition to undergo state technical inspection of vehicle held or owned by a debtor. However, after hearing objections expressed by various institutions, it had been concluded that such restrictions would be disproportional (see *Case Materials, Vol. 1, p. 194*).

Article 34 of the Hague Convention, which is binding upon Latvia, indicates measures that the states could use to meet the obligation of collecting maintenance (for example, tax refund withholding, informing bureaus of credit history, denial, suspension or revocation of various licences). A number of states that are members of the Council of Europe (France, the United Kingdom, Norway, Poland, Lithuania, etc.) have implemented such measures in their legal regulation.

The audio recording of sitting of the *Saeima* Human Rights and Public Affairs Committee of 7 October 2014 allows concluding that persons involved in drafting the contested norm rejected a number of measures referred to in Article 34 of the Hague Convention, deeming them to be disproportional (*Audio recordings of sittings of the Saeima Human Rights and Public Affairs Committee in Case Materials, Vol. 1*).

The documents related to drafting and adopting the contested norm allows concluding that the legislator considered alternatives to restricting a debtor's fundamental rights. The legislator, in choosing one among several potentially appropriate measures for reaching the legitimate aim, enjoys the privilege of assessing and deciding. It is the task of the Constitutional Court to examine compliance of the contested norm with fundamental rights defined in the *Satversme* and not to substitute the legislator's discretion by its opinion on the most reasonable legal solution (*see Judgement of 15 February 2005 by the Constitutional Court in Case No. 2004-19-01, Para 7.5, and Judgement of 1 November 2012 in Case No. 2012-06-01, Para 13.2*). The legislator has assessed, whether in the particular case alternative measures existed that would be less restrictive upon the debtor's fundamental rights established in the *Satversme*. In the framework of this scrutiny the legislator has concluded that such measures did not exist.

In the case under review the Constitutional Court has not gained confirmation that such measures or a set thereof existed that were not assessed in the course of drafting and adopting the contested norm.

In the light of the above it can be concluded that with respect to a debtor more lenient measures that would allow reaching the legitimate aim in the same quality do not exist.

18. In assessing compliance of the restriction upon fundamental rights included in the contested norm, it must be verified, whether the adverse consequences that the person incurs as the result of a restriction upon his fundamental rights do not exceed the benefit that society as a whole gains from

this restriction (*see Judgement of 7 October 2010 by the Constitutional Court in Case No. 2010-01-01, Para 15*). The State must respect and protect an individual's right to inviolability of private life, and interfering can be justified only in strictly defined cases, where it is required by important public interests. The State has the right to restrict a person's right to private life, if an individual acts contrary to generally recognised moral or other social norms (*see Judgment of 26 January 2005 by the Constitutional Court in Case No. 2004-17-01, Para 11 and Para 14.3*).

Compliance of the restriction upon a debtor's fundamental rights established in Article 96 of the *Satversme* must be assessed by taking into account a child's fundamental rights to full development (by receiving maintenance directly from parents), which complies with interests of society as a whole. It is also in the interests of society to recover as much as possible budget resources that have been disbursed to cover debtors' civil law liabilities.

The Constitutional Court has noted that the following fundamental principles of personal data protection exist: rule of law, fairness, minimality, and anonymity. These principles impose upon the legislator the obligation to adopt such legal acts that would guarantee data safety and would also impose proportional restrictions to use of data (*see Judgement of 14 March 2011 by the Constitutional Court in Case No. 2010-51-01, Para 14*). The Constitutional Court will examine, whether the benefit gained by society exceeds the harm inflicted upon a debtor's fundamental rights in accordance with the fundamental principles of data protection referred to above.

18.1. The rule of law principle comprises a requirements that using or transferring personal data for other purposes than those they were initially collected for may take place only with the person's consent or on the basis of law (*see Judgement of 14 March 2011 by the Constitutional Court in Case No. 2010-51-01, Para 14*). It is not disputed in the case under review that a debtor's data have been used and published on the basis of law, i.e., on the basis of the contested norm. Thus, such processing of data complies with the rule of law principle.

18.2. The principle of minimality provides that processing of personal data is prohibited, unless significant and previously clearly defined aims of data processing must be reached. I.e., in view of importance of appropriate data storage, using data is admissible only for performing some particularly important tasks, to protect some legally significant interests (*see Judgement of 14 March 2011 by the Constitutional Court in Case No. 2010-51-01, Para 14*).

The legitimate aims for publishing a debtor's data referred to in Para 14 of this Judgement, i.e., protection of children's right to development and protection of public welfare, are to be deemed significant and clearly envisaged in the contested norm. However, in the context of minimality principle it must be established, whether the scope of published data complies with the aim of data processing.

A debtor's name, surname, the second part of personal identity number and the year of birth are published on the homepage of the Fund's Administration. It is noted in the annotation to the draft law No1186/Lp11, submitted to the *Saeima* on 19 June 2014, "Amendments to the Maintenance Guarantee Fund Law" that such scope of data had been chosen to avoid infringing the rights of those persons, who might have the same names and surnames, and even years of birth.

The Constitutional Court supports the reference made by the Data State Inspectorate that personal data, upon being published on the Internet, become accessible to unrestricted circle of unidentified persons and that is difficult or even impossible to control further use of these personal data (*see Case Materials, Vol. 1, p. 119*).

However, the Constitutional Court holds that this scope of data content-wise to be published is the minimum that ensures the possibility to identify a person. Thus, a person is aware that he can be identified and would not be able to deny the fact of being included in the respective list. The legitimate aim of the restriction upon fundamental rights established in the contested norm cannot be reached without publishing a debtor's data at least in the scope defined by the contested norm.

Thus, the restriction upon a debtor's fundamental rights established by Article 96 of the *Satversme* complies with the principle of minimality.

It must be taken into consideration that due to objective reasons the anonymity principle of data processing cannot be applied to publication of a debtor's data.

18.3. The principle of fairness requires that information is collected and processed in a way that precludes disproportional interference into the privacy, autonomy and integrity of data subjects (*see Judgement of 14 March 2011 by the Constitutional Court in Case No. 2010-51-01, Para 14*). The principle of proportionality provides that if public power restricts a person's rights and legal interests, then a reasonable balance between the interests of a person and those of the State or society should be ensured. The legislator must reasonably weigh interests of all involved parties and adopt a decision that complies with the majority decision that takes into account the interests of affected persons in a commensurate way (*see Judgement of 19 March 2002 by the Constitutional Court in Case No. 2001-12-01, Para 3.1 of the Findings, and Judgement of 30 October 2009 in Case No. 2009-04-06, Para 13.4*).

Pursuant to the contested norm, information about a debtor to be published includes, *inter alia*, information about his family life, including such aspect thereof that the debtor, due to objective or subjective reasons, is not fulfilling his obligation to provide for his child that has been established by law or by a court ruling.

The finding that in legal relationships that affect a child and in all activities with respect to a child his rights and interests are the priority has been established in the case law of the Constitutional Court. This means that not only court and other institutions must base their decisions upon the interests of a child, but also the legislator must ensure that legal acts that are adopted or amended provide the best possible protection for children's interests (*see Judgement of 11 October 2004 by the Constitutional Court in Case No. 2004-02-0106, Para 11*). The principle that a child's interests take the priority applies to all three branches of state power – the legislative, executive and

judicial power. Policy priorities and directions also should be set in compliance with this principle. All activities and decisions that apply to children must be conducted and adopted so as to comply, to the extent possible, with the child's interests and to ensure his rights. Recognising any other priority without a serious cause and justification is inadmissible (*see Judgement of 22 December 2005 by the Constitutional Court in Case No. 2005-19-01, Para 11*).

As concluded in Para 16 of this Judgement, the contested norm promotes a child's right to receive from a parent the means that are necessary for his full development. The State's priority is to ensure that such living conditions and social environment that ensure a child's full physical and intellectual development are created. To provide monthly maintenance to a child at least in minimum amount is the parents' obligation that follows from Section 179 of the Civil Law and cannot be revoked in any circumstances.

The Constitutional Court takes into consideration that pursuant to Regulation No. 5 information about a debtor is deleted from the publicly accessible list, irrespectively of the fact, whether the person is still in debt to the State, if only the person resumes paying maintenance for the current month. Moreover, the contested norm envisages a more favourable regulation for persons, who are unable to fulfil their parental obligation to provide for a child due to disability or prolonged incapacity for work. Although a parent is not released from the duty to provide minimal maintenance for the child also in such cases, information about such debtors is not published on the homepage of the Fund's Administration.

In the case under review a child's fundamental right to development, which must be respected as a priority and, moreover, promotes welfare of the whole society, should be balanced with the fundamental rights of a person who is not fulfilling his obligations. In a situation like this, where regulatory enactments provide a number of legal remedies for the protection of a debtor's rights, a child's fundamental rights should be given the priority.

Hence, the benefit that society gains by restricting a debtor's fundamental rights exceeds the harm inflicted upon his rights.

The restriction that the contested norm places upon a debtor's fundamental rights is proportional and complies with Article 96 of the *Satversme*.

19. In the case under review the Constitutional Court must also assess, whether no other measures exist that would be as effective and the selection of which would be less restrictive upon fundamental rights of a debtor's child established in Article 96 of the Constitutional Court.

19.1. In the course of examining draft law No. 1186/Lp11 "Amendments to the Maintenance Guarantee Fund Law", submitted to the *Saeima* on 19 June 2014, a number of persons pointed out that in assessing proportionality of the legislator's actions the fact that the publishing of a debtor's data might infringe upon the rights and lawful interests of other persons and not only those of the debtor was essential. Publication of a debtor's data might cause infringement upon the rights and legal interests of a child, a member of the most vulnerable social group (*see audio recordings of the sittings of the Saeima Human Rights and Public Affairs Committee, Case Materials, Vol. 1*).

Arbitrary infringement upon inviolability of a child's private life or offending his dignity is inadmissible. The Constitutional Court notes that as the result of identifying a debtor's child the information that is accessible to third persons may point to the fact that the child's parents have had a dispute with regard to providing for this particular or for another child, that one of the parents refuses to fulfil voluntarily the court ruling and that the State is making maintenance payments instead of him. If third persons acquire this information, it can cause negative consequences for the child, subject him to risk of emotional violence or social exclusion, create a feeling of internal discomfort. These harmful consequences leave an impact also upon a child's right to full development in social environment.

In assessing the restriction upon the fundamental rights of a debtor's child that follows from the contested norm, the Constitutional Court, pursuant to the principle that a child's rights and interests hold priority, had to verify,

whether a debtor's data are published solely with the purpose of ensuring a child's right to development and that any possibility that the submitter agrees to publishing of the data because of some other reasons is excluded.

19.2. The legislator, by taking into consideration, *inter alia*, also opinion expressed by the Ombudsman, in the course of drawing up the contested norm has included therein two pre-conditions for publishing a debtor's data. I.e., publication of data is admissible only if: 1) the submitter has agreed to it; 2) the Fund's Administration has not received information from state or local government institutions that publication of the respective information would be harmful to the child's interests. In the case under review, the Constitutional Court links the concept of "a child's interests" with a child's fundamental rights guaranteed by Article 96 of the *Satversme*.

Section 5 and Section 24 of the Protection of the Rights of the Child Law provide that a child's parents have the obligation to ensure the child's wellbeing and protection of his rights. Likewise, Section 177 of the Civil Law establishes parents' direct obligation to care for the child and ensure care and supervision for him.

The Constitutional Court underscored that a submitter's agreement to publication of a debtor's data does not always *per se* guarantee protection of a child's interests, since situations are possible where due to parents' disputes the submitter will not be objective and will try to achieve publication of a debtor's data with a totally different aim, without making full assessment of the child's interests. A number of persons have pointed to this during discussions in the course of adopting the contested norm (*see also audio recordings of the sittings of the Saeima Human Rights and Public Affairs Committee, Case Materials, Vol. 1*). The Constitutional Court does not find in the documents concerning drafting and adoption of the contested norm a confirmation that the legislator has examined such circumstances on their merits.

19.3. The legislator had to examine, whether the mechanism included in the contested norm (the Fund's Administration has not received information from state or local government institutions that publication of respective

information would hurt a child's interests) guarantees full protection of a child's fundamental rights established by Article 96 of the *Satversme*.

In the course of drafting and adopting the contested norm it was not established that the state or local government institutions would ensure in all cases comprehensive assessment of whether publication of respective information could hurt a child's interests. The contested norm provides that it is sufficient that information from state and local government institutions has not been received to publish a debtor's data. It follows from the opinion provided by the Ministry of Justice that the possibilities of state and local government institutions to provide such information to the Fund's Administration that the publication would harm a child's interests in due time, i.e., before publication of information, is only theoretical (*see Case Materials, Vol. 1., pp. 143 and 144*). Thus, the contested norm does not envisage a procedure in which a child's interests should be assessed in all cases, prior to publishing a debtor's data.

As regards the statement made by the *Saeima* and the Ministry of Justice that the violation of a child's right could be eliminated by deleting the debtor's information from the publicly accessible list, the Constitutional Court upholds the opinion expressed by the Data State Inspectorate that publication of a personal data on the Internet is a serious restriction upon a person's rights, because such data become accessible to unlimited circle of unidentifiable persons and, thus, opens the possibility for processing these data contrary to the intended goal. If a person's data have been made publicly accessible, then control over subsequent use of these data is very complicated or even impossible. Moreover, it is impossible to ensure all rights of a data subject defined in Section 15 of the Personal Data Protections Law with respect to personal data published on the Internet (*see Case Materials, Vol. 1, p. 119*). Thus, deleting information from the public list, referred to by the *Saeima* and the Ministry of Justice, *per se* does not guarantee that the violation of a child's fundamental rights that has occurred is eliminated.

19.4. Audio recording of the sitting of the *Saeima* Human Rights and Public Affairs Committee of 7 October 2014 allows concluding that at the sitting a representative of the Fund's Administration pointed out, in particular, that the Fund's Administration did not have sufficient capacity for assessing a child's interests. Therefore it is important to receive respective information from the state and local government institutions (*see audio recording of the sittings of the Saeima Human Rights and Public Affairs Committee, Case Materials, Vol. 1*). In that respect, the proposal submitted to the *Saeima* Human Rights and Public Affairs Committee before examination of the draft law in third reading to add to the draft law a provision that information would not be published also in that case, if the Fund's Administration had at its disposal information obtained in a different way and the assessment thereof indicated a possible infringement upon a child's interests if information were to be published, was not discussed in essence (*see audio recording of the sittings of the Saeima Human Rights and Public Affairs Committee, Case Materials, Vol. 1*).

Participants of the case and summoned persons agreed that protection of a child's right is of essential importance in the case under review. In the case under review, the State Inspectorate for the Protection of Children's Rights (institution, which ensures supervision and control over compliance with regulatory enactments in the field of protection of the rights of a child), has pointed out that in the course of drafting the contested norm its opinion had not been requested, as well as to Article 27 of the Convention on the Rights of the Child, pursuant to which the State must take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child. However, it also follows from the opinion provided by the Inspectorate that if the respective regulation is applied, the possibility that a child's right to private life and inviolability of a person are violated must be taken into consideration, although this possibility is low (*see Case Materials, Vol. 1, p. 112*). It follows from the above, as well as from information included in the case materials regarding persons' request to

delete a debtor's data from the public list, because accessibility thereof could be harmful to the interests of a debtor's child (*see Case Materials, Vol. 1, p. 195*) that publication of a debtor's data affects a child's fundamental right to inviolability of private life. Thus, in the course of drafting and adopting the contested norm this restriction upon a child's rights had to be examined.

19.5. The Constitutional Court notes that a debtor might have both children, who are in the submitter's custody and to whom the debtor must pay maintenance in accordance with a court ruling, as well as children, who are not in the submitter's custody. The permission referred to in Para 1 of the first part in the contested norm pertains only to protection of the rights of such debtor's children, who are in the submitter's custody. Thus, before a debtor's data are published, the person, who has custody over a debtor's child, but who is not the submitter, has no possibility to find out about the potential publication of the debtor's data, and regulatory enactments do not give her the possibility to express her opinion prior to publication of the data. Therefore this person cannot in any way hinder publication of the respective data.

After familiarising itself with materials of the case under review, the *Saeima* has noted in its opinion that since publication of debtors' data began the Fund's Administration has received two requests to delete a debtor's data from the public list because public accessibility thereof could harm the interests of a debtor's children, who are not in the submitter's custody. In each of the two cases referred to above, the request with respect to hers and the debtor's children was submitted by the debtor's next spouse, i.e., a person not referred to in the contested norm. These requests had been satisfied (*see Case Materials, Vol. 1, p. 195*). It follows from the above that pursuant to the contested norm information about a debtor is published, although prior to that state and local government institutions do not assess at all the interests of also that child, who is in the custody of another person, not the submitter, and that the contested norm does not ensure appropriate procedure for assessing the impact of publishing a debtor's data upon the interests of a child like this.

The contested norm does not comprise a legal regulation that would ensure, in essence, that it is assessed, whether publication of data would not harm interests of those debtor's children, who are not in the submitter's custody. The impact of the contested norm upon such children was not examined in the course of drafting and adopting the law.

19.6. The Constitutional Court notes that in the course of drafting and adopting the contested norm the legislator had examined a child's fundamental rights only from the perspective of a child's development.

The legislator did not establish, whether in the particular case there were no alternative measures that would be less restrictive upon the fundamental rights of a debtor's child granted in Article 96 of the *Satversme*.

It follows from findings made in Para 19.3 –19.5 of this Judgement that a regulation, pursuant to which it would be allowed to publish a debtor's data only after the Fund's Administration had received information from state or local government institutions that publication of the respective information would not harm a child's interests, would be less restrictive upon the fundamental rights of a debtor's child established in Article 96 of the *Satversme*.

Thus, with respect to a debtor's child there are other measures that would be as effective and by choosing of which a person's fundamental rights would be restricted to a lesser degree.

Hence, the restriction upon fundamental rights of a debtor's child established in Article 96 of the *Satversme* is incompatible with the proportionality principle.

19.7. The Constitutional Court draws attention to the specific nature of the contested norm and its simultaneous impact upon several groups of persons. I.e., the contested norm restricts fundamental rights established by Article 96 of the *Satversme* of both a debtor and his child. With respect to a debtor this restriction is proportional, whereas with respect to a debtor's child it is not proportional.

Incompatibility of the contested norm with the *Satversme*, to the extent it pertains to a restriction upon the fundamental rights of a debtor's child, follows from the general procedure for publishing a debtor's data established by the contested norm. This incompatibility is manifested in a way that if the Constitutional Court were to recognise the contested norm as being incompatible with Article 96 of the *Satversme* only insofar it pertained to a debtor's child, publication of debtors' data would not be discontinued and would continue placing disproportional restrictions upon the fundamental rights of debtors' children.

Considering that a child's rights take priority, in such circumstances protection of the fundamental rights of a debtor's child established in Article 96 of the *Satversme* can be ensured only by recognising the whole regulation included in the contested norm as being incompatible with the *Satversme*.

Thus, the contested norm is incompatible with Article 96 of the *Satversme*.

20. Pursuant to Para 11 of Section 31 of the Constitutional Court Law the Court must determine the date as of which the contested norm (act) becomes invalid.

In Section 32(3) of the Constitutional Court Law the legislator has granted to the Constitutional Court broad discretion to decide on the date, as of which he contested norm that has been recognised as being incompatible with a legal norm of higher legal force becomes invalid. To recognise the contested norm as being invalid as of another date rather than the day on which the judgment is published, the Constitutional Court must provide reasoning for its opinion (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 34, and Judgement of 28 November 2014 in Case No. 2014-09-01, Para 21*). There have been instances in the case law of the Constitutional Court, where it was impossible to revoke the contested norm immediately and therefore the Court ruled that the contested norm would become invalid as of a future date (*see, for example, Judgement of 15 April*

2009 by the Constitutional Court in Case No. 2008-36-01, Para 18, and Judgement of 16 April 2015 in Case No. 2014-13-01, Para 22).

The Constitutional Court has repeatedly found that in cases, where immediate revocation of the contested norm would be even more incompatible with the *Satversme* than leaving the norm in force, it is possible to set a term for enforcing the judgement (*see, for example, Judgement of 21 October 2008 by the Constitutional Court in Case No. 2008-02-01, Para 12, and Judgement of 9 March 2009 in Case No. 2009-69-03, Para 16*). The Constitutional Court, in exercising the right granted to it by Section 32(3) of the Constitutional Court Law must ensure, to the extent possible, that the situation that might develop after the contested norm becomes invalid would not violate persons' fundamental rights that are guaranteed in the *Satversme* (*see Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 20 December 2010 in Case No. 2010-44-01, Para 17.2*).

The legislator must ensure a balance between various fundamental rights of a child. I.e., granting to one fundamental right of a child less significance compared to his other fundamental rights without obvious grounds for it is inadmissible.

The contested norm protects a child's right to development, facilitating that the obligations of a parent are fulfilled. However, the contested norm does not guarantee equal protection to a child's right to full development and the right to inviolability of private life. If the contested norm were to be recognised as being invalid as of the day when the Judgement is published, a child's right to full development would be restricted, since performance of parental duty to provide for their children would be facilitated to a lesser extent.

The Constitutional Court has recognised that the legislator enjoys broad discretion in selecting the most appropriate regulation for exercising fundamental rights envisaged by the *Satversme*. The Constitutional Court may not substitute the legislator's discretion by its opinion regarding the most rational solution (*see, for example, Judgement of 19 December 2011 in Case*

No. 2011-03-01, Para 20, and Judgement of 2 May 2012 in Case No. 2011-17-03, Para 16). The Constitutional Court recognises that in the particular situation the legislator should be given time for assessing how to ensure the best balance between the child’s fundamental rights granted in Article 96 and Article 110 of the *Satversme*.

Hence, the contested norm is to be recognised as being invalid as of 1 February 2017.

The Substantive Part

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

held:

to recognise Section 5¹ of “Maintenance Guarantee Fund Law” as being incompatible with Article 96 of the *Satversme* of the Republic of Latvia” and invalid as of 1 February 2017.

The Judgement is final and not subject to appeal.

The Judgement enters into force on the date it is published.

Chairman of the court sitting

Aldis Laviņš