Constitutional judgment 5-18-7

S U P R E M E C O U R T

CONSTITUTIONAL REVIEW CHAMBER

JUDGMENT

in the name of the Republic of Estonia

Case number	5?18?7
Date of judgment	9 December 2019
Composition of court	Chairman: Villu Kõve; members: Viive Ligi, Nele Parrest, Peeter Roosma and Tambet Tampuu
Case	Review of the constitutionality of Narva City Council regulations and of failure to issue a legislative act
Basis for proceedings	Application of 17 October 2018 by the Chancellor of Justice
Participants in the proceedings	Chancellor of Justice
	Narva City
	Minister of Social Protection

Type of hearing Written procedure

OPERATIVE PART

1. To satisfy the application by the Chancellor of Justice in part.

2. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 6 of 20 February 2014 on "The conditions and procedure for providing home help services in Narva city":

2.1. § 3 clauses 1)–3);

2.2. Parts of the sentence containing the words "on working days" and "in the total amount of up to 20 hours a week, but not more than 80 hours a calendar month" in § 5 subsection (4);

2.3. § 6 subsection (2) clause 2);

3. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 27 of 22 November 2012 on "The procedure for placement in a social welfare institution in Narva city":

3.1. Part of the sentence containing the words "whereas, as first priority, persons who have no legal maintenance providers will be placed in the institution" in § 3 subsection (1);

3.2. § 4 subsection (3) and the first sentence of subsection (4);

3.3. Part of the sentence containing the words "or their legal maintenance providers" in § 5 subsection (1) clause 1).

4. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 26 of 18 December 2014 on "The procedure for establishing care in respect of an adult and appointing a caregiver, and paying the caregiver's allowance":

4.1. Part of the sentence containing the words "who, under the Social Benefits for People with Disabilities Act, has been identified as having a moderate, severe or profound disability" in § 2 clause 1);

4.2. Part of the sentence containing the words "within 30 days as of submitting the application" in § 4 subsection (1).

5. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 23 of 18 June 2009 on "The procedure for leasing and using municipal housing":

5.1. § 4 subsection (2) clause 3) insofar as it restricts the provision of guaranteed housing as laid down in the Social Welfare Act;

5.2. § 7 subsection (4) clause 2) insofar as it restricts the provision of guaranteed housing as laid down in the Social Welfare Act;

5.3. § 7 subsection (5) insofar as it restricts the provision of guaranteed housing as laid down in the Social Welfare Act;

5.4. § 19 insofar as it entitles a legal person in private law to decide on providing the guaranteed housing service.

6. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 23 of 17 June 2010 on "The procedure for providing services to persons of no fixed abode":

6.1. § 2 subsection (3) clause 3) and § 6 subsection (2) insofar as they fail to ensure psychological counselling to a service recipient in providing the safe house service;

6.2. § 6 subsection (1) insofar as it fails to ensure provision of the safe house service to all those in need of a safe environment.

7. To declare unconstitutional and repeal the following parts of Narva City Council Regulation No 12 of 21 March 2013 on "The conditions and procedure for providing the safe house service to children in Narva city":

7.1. § 2 subsection (2) insofar as it obliges a person bringing a child to a safe house to submit their personal data and verify the authenticity of the data where that person is entitled to refuse to submit their data under § 27(2) (second sentence) of the Child Protection Act;

7.2. § 3 subsection (5) insofar as it fails to ensure developmental activities corresponding to the age and needs of a service recipient in providing the safe house service.

8. To declare unconstitutional and repeal § 1 subsection (6) of Narva City Council Regulation No 10 of 21 March 2013 on "The procedure for providing the debt counselling service in Narva city".

9. To declare unconstitutional failure to issue a legislative act to regulate providing the personal assistant service in Narva city.

10. To declare unconstitutional failure to issue a legislative act to regulate provision of the guaranteed housing service in Narva city in instances where a local authority does not have vacant housing owned by it.

11. To dismiss the remainder of the application by the Chancellor of Justice.

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FACTS AND COURSE OF PROCEEDINGS

1.On 9 December 2015, the Riigikogu adopted the Social Welfare Act (SWA) repealing the Social Welfare Act that had been in force until then (hereinafter 'the old SWA'). Chapter 2 of the Social Welfare Act regulates assistance arranged by local authorities, laying down local authority social services in Division 2.

2.The Chancellor of Justice analysed Narva City Council regulations on provision of social services and found the following conflicts with the laws and the Constitution:

1) § 3 clauses 1)–3), § 5 subsection (4), and § 6 subsection (2) clause 2) of Narva City Council Regulation No 6 of 20 February 2014 on "The conditions and procedure for providing home help services in Narva city" (hereinafter 'the Home Help Service Regulation');

2) § 1 subsection (1), § 3 subsection (1), § 4 subsections (3)–(4), and § 5 subsection (1) clause 1 of Narva City Council Regulation No 27 of 22 November 2012 on "The procedure for placement in a social welfare institution in Narva city" (hereinafter 'the Social Welfare Institutions Regulation');

3) § 1 subsections (1)–(2) and § 2 clauses 1)–3) of Narva City Council Regulation No 15 of 23 April 2015 on "The procedure for providing the support person service in Narva city" (hereinafter 'the Support Person Service Regulation');

4) § 1 subsections (1) and (3) and § 2 subsection (3) of Narva City Council Regulation No 8 of 18 May 2017 on "The procedure for use of funds allocated for financing social services for children with a severe and profound disability" (hereinafter 'the Regulation on Financing Social Services for Children with Disability');

5) § 2 clauses 1) and 3), § 3 subsection (1) clauses 2)–3), and § 4 subsection (1) of Narva City Council Regulation No 26 of 18 December 2014 on “The procedure for establishing care in respect of an adult and appointing a caregiver, and paying the caregiver’s allowance” (hereinafter ‘the Establishment of Care Regulation’);

6) failure to regulate the procedure for providing the personal assistant service to adults;

7) § 2 subsection (1) and subsection (3) clause 3), § 5 subsection (1), and § 6 subsections (1)–(2) of Narva City Council Regulation No 23 of 17 June 2010 on “The procedure for providing services to persons of no fixed abode” (‘the Regulation on Services to Persons of No Fixed Abode’);

8) § 2 subsection (2) and § 3 subsection (5) of Narva City Council Regulation No 12 of 21 March 2013 on “The conditions and procedure for providing the safe house service to children in Narva city” (hereinafter ‘the Regulation on the Safe House Service for Children);

9) § 1 subsection (2) and § 10 subsections (1), (2), (4) and (8) of Narva City Council Regulation No 10 of 21 April 2016 on “The procedure for payment of supplementary social benefits in Narva city” (hereinafter ‘the Supplementary Social Benefits Regulation’);

10) § 3 subsections (3) and (6), § 4 subsection (2) clause 3), § 7 subsections (4) and (5), § 16, and § 19 of Narva City Council Regulation No 23 of 18 June 2009 on “The procedure for leasing and using municipal housing” (hereinafter ‘the Regulation on Grant of Municipal Housing’);

11) § 1 subsections (2) and (6) and § 2 of Narva City Council Regulation No 10 of 21 March 2013 on “The procedure for providing the debt counselling service in Narva city” (hereinafter ‘the Debt Counselling Service Regulation’).

3.On 25 August 2017, the Chancellor of Justice made a proposal to Narva City Council to bring the regulations on provision of social services in Narva city into line with the law and the Constitution of the Republic of Estonia.

4.On 4 January 2018, the Chairman of Narva City Council informed the Chancellor of Justice that a draft on amending the contested regulations would be drawn up by 31 March 2018 at the latest. On 21 June 2018, the Chairman of Narva City Council informed the Chancellor of Justice that Narva City Council was no longer processing the draft to resolve the problems in Narva social services regulations indicated in the proposal by the Chancellor of Justice.

5.On 17 October 2018, the Chancellor of Justice filed an application with the Supreme Court seeking a declaration of unconstitutionality and repeal of the following provisions to the extent contested in the application:

1) § 3 clauses 1)–3), § 5 subsection (4) and § (6) subsection (2) clause 2) of the Home Help Service Regulation;

2) § 3 subsection (1), § 4 subsection (3) and subsection (4) (first sentence), and § 5 subsection (1) clause 1) of the Social Welfare Institutions Regulation;

3) § 1 subsection (1) and § 2 clauses 1)–3) of the Support Person Service Regulation;

4) § 1 subsection (3) (second sentence) of the Regulation on Financing Social Services for Children with Disability;

5) § 2 clause 1) and § 4 clause 1) of the Establishment of Care Regulation;

6) failure to regulate the procedure for providing the personal assistant service to adults;

7) § 2 subsection (3) clause 3) and § 6 subsections (1)–(2) of the Regulation on Services to Persons of No Fixed Abode;

8) § 2 subsection (2) and § 3 subsection (5) of the Regulation on the Safe House Service for Children;

9) § 1 subsection (2) (second sentence) and § 10 subsections (1), (2), (4) and (8) of the Supplementary Social Benefits Regulation;

10) § 3 subsections (3) and (6), § 4 subsection (2) clause 3), § 7 subsections (4) and (5), and § 19 of the Regulation on Grant of Municipal Housing;

11) § 1 subsection (6) of the Debt Counselling Service Regulation.

REASONING BY THE CHANCELLOR OF JUSTICE

6.The Constitution (the principle of the social state and its expressions in §§ 27 and 28 of the Constitution) gives rise to the duty of the state to assist people when social risks arise, and to ensure that key social rights are equally protected throughout Estonia. The duty to set out a minimum level of measures of assistance is also laid down in international law (the Revised European Social Charter, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities).

7.With the Social Welfare Act, the legislator imposed an obligation on local authorities to provide social services laid down in Division 2 of Chapter 2 of the Act, so that a rural municipality or a city cannot refuse to provide them. In the opinion of the Chancellor of Justice, the duty to organise provision of social welfare services does not interfere with the right of self-organisation of local authorities. At the time of filing the application, the Chancellor was not convinced that imposing the duty of provision of social welfare assistance and services on local authorities would be unconstitutional and that local authorities should only play the role of an intermediary of the services while the costs would be covered directly from the state budget based on the solidarity principle throughout Estonia.

8.By taking into account the principles of social protection laid down by law (§ 3 Social Welfare Act and Division 2 of Chapter 1 (§§ 4–9) of the General Part of the Social Code Act) as well as the requirements established for services (§§ 17–45^{17} Social Welfare Act), a local authority must decide by an administrative act whether a specific individual needs to be provided with assistance and what kind of assistance and to what extent a specific individual needs (§ 15 Social Welfare Act and § 16(3) General Part of the Social Code Act). General restrictions are not allowed. An individual must receive assistance corresponding to their needs and to the extent necessary and when they need it since a service provided to a smaller extent or delayed might not help the individual. However, the law does not entitle those in need to demand the service to the extent desired by them, because both the service and its extent, or a combination of several services, depends on the specific case.

9.Social protection is organised as a uniform system (§ 10(1) General Part of the Social Code Act (GPSCA)) and correct use of the principles of social protection should make the system of providing assistance more effective (including use of funds). Individuals should be assisted as soon as possible, so as to prevent their problems from worsening, and cheaper social services that support living at home and independent coping should be offered instead of expensive services (e.g. the general care service). Suitable services (e.g. the social transport service, the personal assistant service) enable those in need of assistance to go to work, thereby increasing the revenue base of a local authority.

10. The duty of a local authority to organise provision of social services means that a local authority must ensure the actual availability of services and those in need may claim a service necessary for them. If no providers of social services exist in a city or rural municipality, then the rural municipality or city must find a service provider from elsewhere or start providing the service itself. An interpretation to the contrary would interfere with human dignity and would contravene § 12, § 14 and § 28(2) of the Constitution, as well as obligations arising from international law, including the duty of the state to be active under the Convention on the Rights of Persons with Disabilities). A large proportion of those in need who do not have sufficient strength or skills might in that case be deprived of assistance.

11. Although an individual must pay for the social service needed by them (§ 16(1) SWA), the fee may not be so high as to hinder obtaining the service (§ 16(3) SWA). If necessary, a local authority must participate in covering the costs of the service, so that an individual is not deprived of the service because of lack of money. A local authority must assess whether and to what extent an individual is able to pay for the service, if necessary with the help of maintenance providers (§ 16(2) SWA).

12. In order for those in need to understand clearly what kind of assistance the local authority of their residence is offering and what they should do to apply for and receive it, the local authority must establish a procedure for providing social welfare assistance (§ 14(1) SWA). Since organisation of social services laid down in Division 2 of Chapter 2 of the SWA is the duty of local authorities, the principle of legality (§ 3 and § 154(1) Constitution) requires that, while regulating a service, local authorities must comply with the requirements established by the Riigikogu (stay within the limits of their powers and fulfil the duty within the extent required by law). A local authority can further specify general statutory rules in its legislative act but may not impose new substantive restrictions. Restrictions (e.g. as to the scope of services) cannot be justified by the aim of informing those in need about the type and extent of assistance to which they are entitled, or by the need to plan the necessary budgetary amounts for providing the service (allegedly the needs of people are unknown).

13.A local authority must know its community and be capable of forecasting the needs of the community and the amount of money necessary to cover their needs. To ascertain those potentially in need, it is possible to use the statistical data available to the state (e.g. Social Insurance Board data on people with disabilities, Statistics Estonia data on health indicators, social protection, income, and the like) and to plan the budgetary resources with a necessary reserve. If necessary, a supplementary budget can be adopted. A local authority may not refuse to provide mandatory social services because it does not have sufficient money to provide

those services. The state must ensure that local authorities have sufficient funds to fulfil their mandatory tasks (§ 154 Constitution). If a local authority finds that the state has failed to do so, it may sue the state to claim the funds lacking.

(1) § 3 of the Home Help Service Regulation.

14. Social services to individuals must be organised by a local authority corresponding to the individual's address in the population register, since money to local authorities (income tax, allocations from the equalisation fund and the support fund) is allocated based on population register data. If a local authority refuses to provide assistance to people in need who, according to the register, are its residents, but in actuality reside elsewhere, those people are deprived of the necessary assistance as no other local authority is obliged to help them either. Services and assistance to an individual may also be provided by a rural municipality or city within whose administrative boundaries they are staying, while providing the assistance must be coordinated with the rural municipality or city where the individual resides according to the population register. Section 3 of the Home Help Service Regulation precludes providing the home help service to those who in actuality do not reside in Narva city but are residents of Narva according to the population register. Therefore, § 3 of the Home Help Service Regulation, insofar as it requires provision of the home help service only to individuals whose registered and actual residence is in Narva, contravenes § 3(1) clause 1), § 15(1), § 17(1) and (2) of the SWA and § 3 and § 154(1) of the Constitution.

(2) § 3 clauses 1)–3) of the Home Help Service Regulation

15. Section 3 clauses 1)–3) of the Home Help Service Regulation restricts receiving the home help service by persons in need who have maintenance providers and those in need whose abilities to ensure the service are sufficient. A local authority cannot impose, as conditions for providing the home help service, absence of maintenance providers or their inability to care for the family member in need, or the fact that maintenance providers could not be contacted. Maintenance providers have a duty to pay maintenance support to an adult (§ 100(1) Family Law Act), but maintenance providers cannot be required to provide personal care for adult next of kin or to organise services for a person in need. The existence of maintenance providers must only be taken into account in covering expenses for a service if a person in need lacks sufficient money (§ 16(2) SWA). A local authority also cannot refuse to provide a service to people who have sufficient money to ensure their care. The basis should be an individual's need for assistance but not whether the individual or their maintenance providers have money to pay for the service. Otherwise, obtaining the necessary assistance would depend on the knowledge and skills of an individual or their maintenance providers and their ability to arrange assistance. On that basis, § 3 clauses 1)–3) of the Home Help Service Regulation contravene § 3(1) clause 1), § 5(1), § 15(1), § 17(1) and (2) of the SWA, § 100(1) of the Family Law Act, and § 3 and § 154(1) of the Constitution.

(3) § 5(4) of the Home Help Service Regulation

16. When providing the service, the needs of the individual must be the primary consideration (§ 3(1) clause 1) SWA). That is, a local authority must provide assistance to an individual when they need it. If an individual also needs a home help service on Sunday, they must be enabled to receive it. A local authority cannot leave those in need without a home help service (e.g. heating, cooking) on holidays; that may endanger the individual's life and health and interfere with their dignity. The law does not entitle a local authority to refuse to provide a home help service due to fulfilment of the maximum number of hours. A local authority may enable an individual with a very high need for care to receive another service that covers the person's need for assistance but is more economical for the local authority in view of sustainable use of public resources (§ 10(1) GPSCA and § 3(1) clause 1) SWA). This, however, is a case-by-case discretionary decision. Section 5(4) of the Home Help Service Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1), § 17(1) and (2) of the SWA and § 3 and § 154(1) of the Constitution.

(4) § 6(2) clause 2) of the Home Help Service Regulation

17.A fee for social services may be charged to an individual, and a local authority must lay down the conditions and procedure for charging a fee (§ 16(1) SWA), while keeping in mind the rules laid down by law. A local authority may only lay down the conditions and amount of a fee that enable taking into account the situation of each person in need (their ability to pay for the service) (§ 16(2) SWA), and the amount of the fee may not become a hindrance to obtaining the service (§ 16(3) SWA). That is, by a legislative act of general application a local authority may not establish a fee that an individual must pay for the service. An individual may not be placed in a situation where they must choose between satisfying their own basic needs and those of their family and obtaining the necessary social service. This would amount to unequal treatment of people based on their financial situation. Section 6(2) clause 2) of the Home Help Service Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1), § 16(2) and (3), § 17(1) and (2) of the SWA and § 3 and § 154(1) of the Constitution.

(5) § 3(1) of the Social Welfare Institutions Regulation

18. In providing social services, the law does not allow preference to be given to those individuals in need who have no maintenance providers. Such a restriction strongly interferes with the rights of people in need who have maintenance providers. Maintenance providers have no obligation to personally care for an adult in need or to organise providing the necessary social services; organising services is the task of a local authority. If a person needs the general care service provided outside their home (also when their next of kin cannot provide or are not capable of providing them with 24-hour care), the local authority must provide that service for them (§ 5(1), § 15(1), § 20(1) SWA). The law does not allow delay in provision of a social service (putting someone in a queue to wait their turn), as service should be provided based on a person's needs (§ 3(1) cl. 1) SWA). If a person is left without the general care service, this may endanger their life and health and interfere with their dignity, Section 3(1) of the Social Welfare Institutions Regulation, which gives the first priority in receiving the service to persons in need who have no maintenance providers,

contravenes § 3(1) clause 1), § 5(1), § 15(1), § 20(1) of the SWA, § 100(1) of the Family Law Act, and § 3, § 12 and § 154(1) of the Constitution.

(6) § 4(3) of the Social Welfare Institutions Regulation

19. The Social Assistance Board is not entitled to decide on payment of legal maintenance providers' own contribution as laid down in § 4(3) of the Regulation. In providing a service, the local authority enters into a legal relationship with the person in need. Under § 16 of the SWA, a local authority must be convinced that the person in need is able to pay for the service needed by them. To that end, the local authority must assess the income of the person in need or the person's opportunities to increase their income. To increase one's income, a person in need may claim maintenance support from maintenance providers. A local authority has no right to decide how much maintenance providers should pay for the service offered to a person in need. However, a local authority can assess to what extent a person in need may claim maintenance support from maintenance providers and what amount the person in need could then pay for the social service. If a local authority has paid for a service to a person in need instead of maintenance providers, the local authority may claim the expenses incurred from the maintenance providers under § 1023 of the Law of Obligations Act. On that basis, § 4(3) of the Social Welfare Institutions Regulation contravenes § 16(2) of the SWA, § 97 clause 3) of the Family Law Act, and § 3 and § 154(1) of the Constitution.

(7) § 4(4) (first sentence) of the Social Welfare Institutions Regulation

20. The requirement in the first sentence of § 4(4) of the Social Welfare Institutions Regulation that a person in need should dispose of property in order to cover the costs of a service contravenes § 16(2) of the SWA, § 97 clause 3) of the Family Law Act, and § 3, § 27(5), § 32(2) and § 154(1) of the Constitution. The Riigikogu has not authorised local authorities to restrict the inviolability of property (§ 32 Constitution) in that manner.

21.A local authority must assess the ability of a person in need to pay for a service (§ 16(2) SWA). To do that, it is necessary to analyse a person's financial situation, including whether they can generate income from making dispositions with their property (lease, rent, sale). Dispositions with property include several possibilities, and the possibility to lease or rent should be preferred, while sale of property might not always be practical. There are also things the sale of which cannot be reasonably expected from a person (see § 66(1) Code of Enforcement Procedure). A person's ability to cope may also sufficiently improve so that they could live at home, in that case needing a dwelling. A local authority also cannot oblige a person to pay for a service from income received from the sale of specific property. A person themselves decides how they pay for a service (e.g. by taking a loan, entering into a succession contract or selling part of their property).

(8) § 5(1) clause 1) of the Social Welfare Institutions Regulation

22.A local authority may refuse to provide a social service to a person in need in cases laid down in §§ 18 and 19 of the General Part of the Social Code Act (GPSCA). These provisions do not allow a local authority to leave a person without assistance because of actions by maintenance providers. If maintenance providers are a party to a contract and they violate the contract, other possibilities to secure compliance with the contract should be considered (e.g. claiming a contractual penalty). If a local authority terminates provision of a service on grounds not set out in § 18 or § 19 of the GPSCA, it violates its duty to provide a person in need with a service corresponding to their needs. Section 5(1) clause 1) of the Social Welfare Institutions Regulation allows termination of provision of a service to a person in need if the person's legal maintenance providers fail to comply with the conditions of the contract, and thus contravenes § 3(1) clause 1), § 5(1), § 15(1), § 20(1) of the SWA, §§ 18 and 19 of the GPSCA, and § 3 and § 154(1) of the Constitution.

(9) § 1(1) of the Support Person Service Regulation

23. Provision of social services to a person must be organised by the local authority of the person's residence as entered in the population register (§ 5(1) SWA). No law entitles a local authority to require in providing social services (including the support person service) that the person should in actuality also live in the local authority entered in the population register. By imposing that restriction in § 1(1) of the Support Person Service Regulation, Narva city has deprived persons in need of the support person service necessary for them. Section 1(1) of the Support Person Service Regulation thus contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 23(1)–(3) of the SWA, and § 3 and § 154(1) of the Constitution.

(10) § 2 clauses 1)–3) of the Support Person Service Regulation

24. Section 2 clauses 1)–3) of the Support Person Service Regulation restricts the range of persons to whom the support person service should be provided in case of necessity. Under § 2 clause 1) of the Regulation, the service is available to a parent, excluding other persons raising the child (the child's grandparent, guardian or another person enjoying the right of custody of the child) to whom § 23(2) of the SWA requires provision of the service where necessary. Under § 2 clause 2) of the Regulation, the service is made available only to a child in substitute home service, under guardianship, in foster care, in shelter service or having left the shelter service and set up an independent life. Under § 23(3) of the SWA, entitlement to the service is enjoyed by every child in need of development support (including for care procedures in the case of a child with a disability). Section 2 clause 2) of the Support Person Service Regulation does not enable provision of the support person service, for example, to a child living together with parents or grandparents and needing

assistance to support their development. In view of the aim set out in § 23(3) of the SWA, assistance may also be needed by a child who does not fit within the definition set out in § 2 clause 2) of the Regulation or who is not mentioned in the Regulation on Financing Social Services for Children with Disability. On that basis, § 2 clauses 1)–3) of the Support Person Service Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 23(1)–(3) of the SWA, and § 3 and § 154(1) of the Constitution.

(11) § 1 subsection (3) (second sentence) of the Regulation on Financing Social Services for Children with Disability

25. The Regulation covers provision of social services to children with a severe or profound disability, including the support person service, transportation for the disabled service (social transport service within the meaning of § 38 of the SWA), adaptation of a dwelling service, and child care service. Since organisation of services to children with a severe or profound disability has been laid down in a separate legal act, the Support Person Service Regulation does not apply to them. In line with the second sentence of § 1(3) of the Regulation, services are provided depending on whether the local authority has funds for this. If a local authority provides services only if funds for this exist, then the costs of the service could be left excessively for the individual to bear. If an individual themselves is also unable to pay for the service, they may be left without the necessary social service – a child may be left without an opportunity to acquire education or obtain a healthcare service, a child's parent may consequently be displaced from the labour market. The law does not allow a local authority to organise provision of social services prescribed by the Social Welfare Act only when funds for this exist. When setting the amount of the fee charged for social services, a local authority must proceed from a person's financial situation (§ 16(2) SWA) and the amount of the fee may not hinder access to the service (§16(3) SWA). On that basis, the second sentence of § 1(3) of the Regulation on Financing Social Services for Children with Disability contravenes § 3(1) clause 1), § 5(1), § 15(1), § 16(2) and (3), § 23(1)–(3), § 38(1), § 42, § 45^1(1), § 45^2(2) of the SWA, § 10 of the Preschool Child Care Institutions Act, and § 3 and § 154(1) of the Constitution.

(12) § 2 clause 1) of the Establishment of Care Regulation

26. Under § 2 clause 1) of the Establishment of Care Regulation, a person under care is a person with a moderate, severe or profound disability. Thus, care is provided only to persons whose degree of disability has been established by the Social Insurance Board. In line with § 26(1) of the SWA, care for an adult with a disability should be ensured regardless of establishing the degree of disability.

27. The definition of disability is set out in § 2(1) of the Social Benefits for People with Disabilities Act. The degree of disability is established in respect of a person the severity of whose disability exceeds a certain threshold. A person may also have a disability when no degree of disability has been established for them. To ascertain a person's need for assistance, a local authority must assess the existence of disability (e.g. a

person loses their eyesight after an accident) and decide whether a social service could help the person. For example, under § 26(1) of the SWA, care may be established for a person diagnosed with a stroke who is unable to manage their affairs without external assistance regardless of whether the person has applied to the Social Insurance Board to have their degree of disability established. As under § 26(1) of the SWA one of the caregiver's tasks may also include assistance in managing a person's affairs, linking a service to a person's degree of disability might also not be substantively justified in that case. On that basis, § 2 clause 1) of the Establishment of Care Regulation, which links provision of a service to the degree of disability, contravenes § 3(1) clause 1), § 5(1), § 15(1), § 26(1) of the SWA and § 3 and § 154(1) of the Constitution.

(13) § 4(1) of the Establishment of Care Regulation

28. Section 4(1) of the Establishment of Care Regulation, under which a decision on establishing care is made within 30 days of submitting an application, contravenes § 25(1) of the GPSCA and § 3 and § 154(1) of the Constitution. In line with § 25(1) of the GPSCA, a decision on granting a benefit must be made within ten working days as of receiving the application.

14) failure to regulate the procedure for providing the personal assistant service to adults

29. The personal assistant service is a social service intended for an adult with a disability which a local authority is required to provide to their residents in the case of necessity. A local authority must lay down the procedure for providing social welfare assistance which covers providing all the mandatory local social services (§ 14(1) SWA). In Narva city, providing the personal assistant service is regulated only by the Regulation on Financing Social Services for Children with Disability, under which the personal assistant service is not provided to an adult with a disability. Narva city must establish a procedure for providing the personal assistant service to adults with a disability, since absence of regulation contravenes § 14(1), § 27(1) and (2) of the SWA, and on account of conflict with the law it also contravenes § 3 and § 154(1) of the Constitution.

(15) § 2(3) clause 3) and § 6(2) of the Regulation on Services to Persons of No Fixed Abode

30. If necessary, recipients of the safe house service must also be ensured a safe environment, crisis assistance, and care and development, in addition to temporary housing. In the frame of crisis assistance, if necessary, a person should also be provided with psychological counselling in addition to social counselling (§ 33 SWA). The Regulation on Services to Persons of No Fixed Abode lays down the safe house service so that it does not enable assistance to persons to the extent required by law. Thus, the local authority has restricted access to appropriate assistance, and residents of Narva receive the safe house service whose quality is inferior to the level required. For these reasons, § 2(3) clause 3) and § 6(2) of the Regulation on

Services to Persons of No Fixed Abode contravene § 3(1) clause 1), § 5(1), § 15(1) and § 33 of the SWA, and § 3 and § 154(1) of the Constitution.

(16) § 6(1) of the Regulation on Services to Persons of No Fixed Abode

31. Under § 6(1) of the Regulation on Services to Persons of No Fixed Abode, an adult in Narva city may receive the safe house service only when their means of subsistence do not enable them to use or own another dwelling, and those who have no opportunity to lease municipal housing. Under § 33 of the SWA, one of the aims of the safe house service is to offer a safe environment regardless of the existence of means of subsistence or a dwelling. This service may also be needed by a person who has a dwelling, as well as sufficient means of subsistence or an opportunity to lease municipal housing. Thus, § 6(1) and (2) of the Regulation on Services to Persons of No Fixed Abode restrict the purpose of the service and need for assistance, and thus they contravene § 3(1) clause 1), § 5(1), § 15(1) and § 33(1) of the SWA, and § 3 and § 154(1) o the Constitution.

(17) § 2(2) of the Regulation on the Safe House Service for Children

32. Under § 2(2) of the Regulation on the Safe House Service for Children, a person bringing a child to a safe house must submit their data and, if necessary, also present a personal identity document to verify personal data. Although § 33(3) of the SWA obliges a person bringing a child to a safe house to give to the service provider information necessary for providing the service, this does not oblige that individual to disclose their personal data. Under § 27(5) of the Child Protection Act, a person giving notification of a child in need of assistance has the right not to disclose their data for their own protection or the protection of their family. If the person giving notification of a child in need of assistance and the person bringing the child to a safe house is one and the same individual, they also cannot be required to disclose their data. Since the law does not oblige a person giving notification of a child in need of assistance to disclose their personal data, Narva city cannot impose that obligation under their regulation either. On that basis, § 2(2) of the Regulation on the Safe House Service for Children contravenes § 27(5) of the Child Protection Act and § 3 and § 154(1) of the Constitution.

(18) § 3(5) of the Regulation on the Safe House Service for Children

33. Section 3(5) of the Regulation on the Safe House Service for Children lists the activities that the safe house service includes. The list does not include activities contributing to a child’s development and corresponding to a child’s age and needs (including, e.g., going to a kindergarten) which is necessary to achieve the aim of the service laid down in § 33 of the SWA. Since the provision does not set out all the necessary statutorily prescribed activities, it restricts the appropriate assistance, and a person who should

receive assistance through the safe house service may be left without the necessary assistance. On that basis, § 3(5) of the Regulation on the Safe House Service for Children contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 33(1) of the SWA, and § 3 and § 154(1) of the Constitution.

(19) § 1(2) (second sentence) of the Supplementary Social Benefits Regulation

34. Narva city has not established a description of the social transport service and the procedure to apply for it, so that the city's activities contravene § 14(1) of the SWA. Transport allowance should be seen as participation by a local authority in covering the costs of the social transport service (in line with § 16 of the SWA).

35. Under § 1(2) of the Supplementary Social Benefits Regulation, benefits (including the transport allowance) are paid within the funds allocated for this in the city budget. Once the money allocated for providing a service is used up, social transport is terminated and this may restrict a person's right to assistance (e.g. because of lack of money a person cannot go to the doctor). The law does not allow for making provision of the social transport service dependent on whether a local authority has money for this, nor does it allow imposition of such a restriction (§ 38(1) SWA). A local authority may not restrict assistance necessary for an individual (§ 3(1) cl. 1) SWA) and only such a proportion of the service fee may be left for an individual to bear which they can afford and which does not hinder their access to the service (§ 16(2) and (3) SWA). If necessary, the remaining expenses should be borne by the local authority itself and the local authority must allocate funds necessary for this in its budget. The second sentence of § 1(2) of the Supplementary Social Benefits Regulation contravenes § 3(1) clause 1), § 5(1), § 14(1), § 15(1), § 16(2) and (3), § 38(1) of the SWA, and § 3 and § 154(1) of the Constitution.

(20) § 10(1) and (2) of the Supplementary Social Benefits Regulation

36.A local authority must organise (including, if necessary, finance) the social transport service for everyone with a disability who needs it (including those whose degree of disability has not been established) to go to work or to an educational institution, as well as to use public services (§ 38(1) SWA). Section 10(1) and (2) of the Supplementary Social Benefits Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 38(1) of the SWA, and § 3 and § 154(1) of the Constitution. The reason is that not all the target groups mentioned in § 38 of the SWA have their transport costs covered under the Regulation, nor does it list all the places where those in need should be able to travel.

37. Narva city covers the costs of the social transport service for pupils with special educational needs to travel to a school outside Narva or for children with a profound disability to travel to an educational, medical

treatment or rehabilitation institution. For adults with a severe or profound disability, only the costs incurred in connection with obtaining healthcare or social services are compensated (§ 10(1) and (2) of the Regulation). For others with a disability, and for travel to other destinations required by law, Narva city does not cover the costs of the social transport service. Although applying for supplementary support laid down in § 11 of the Supplementary Social Benefits Regulation is not ruled out for the purpose also of covering the costs of social transport, due to the conditions for obtaining support it cannot be applied for in the case of all the needs set out in § 38(1) of the SWA. The transport needs of a person with a disability are not necessarily temporary nor do they appear only in an emergency.

(21) § 10(4) of the Supplementary Social Benefits Regulation

38. Under § 10(4) of the Supplementary Social Benefits Regulation, Narva city compensates the costs of the social transport service retrospectively. The law does not prohibit covering the costs of the service retrospectively, but a local authority must also ensure coverage of the costs of a person who has no money to pay for the service (e.g. the bill is paid by the city or the person is paid the support in advance). Section 3(1) clause 6) of the SWA obliges local authorities to ensure that measures of assistance are as accessible as possible. The procedure for financing the social transport service in Narva does not offer an opportunity to request that the city itself should pay a service provider if the person themselves has no money to pay for the service. This means that a person with a disability might not be able to undertake the necessary travel because of lack of money, i.e. they would fail to receive the necessary assistance. In Narva, exceptional support is paid as well (§ 11 Supplementary Social Benefits Regulation) but not all those in need as set out in § 38(1) of the SWA can apply for that support. On that basis, § 10(4) of the Supplementary Social Benefits Regulation contravenes § 3(1) clauses 1) and 6), § 5(1), § 15(1), § 16(3), § 38(1) of the SWA, and § 3 and § 154(1) of the Constitution.

(22) § 10(8) of the Supplementary Social Benefits Regulation

39. Section 10(8) of the Supplementary Social Benefits Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1), § 16(2) and (3), § 38(1) of the SWA, and § 3 and § 154(1) of the Constitution since it unequivocally determines the proportion of the transport costs of a person in need that the city would cover. This does not enable ensuring the necessary extent of the social transport service to each person in need. When setting the amount of the fee charged for a service, the scope of the service, its cost and the financial situation of the service recipient and their family should be taken into account, but the fee may not hinder access to the service. Rural municipalities and cities must proceed from those criteria, regardless of how they have decided to assist people in paying for the social transport service (based on a bill to the service provider or based on expense documents to the service user, or the like). If a local authority decides to pay support to the person, the support must be sufficient and enable the person to receive the service to the necessary extent (§ 3(1) cl. 1) SWA). The possibility to obtain exceptional support depends, inter alia, on the income of the person in need and their family, which must remain below 50% of the minimum wage.

(23) § 3(3) and (6) of the Regulation on Grant of Municipal Housing

40. The Regulation on Grant of Municipal Housing is the only regulation covering the guaranteed housing service in Narva city. Under § 3(3) and (6) of the Regulation, the city leases municipal housing when vacant space is available. Under § 3(1) clause 1), § 15(1) and § 41(1) and § 42 of the SWA, providing the service must proceed from the needs of a person, not the capabilities of a local authority or the existence of vacant municipal apartments. The law does not allow restriction of access to the guaranteed housing service on account of availability of municipal housing. A local authority must organise mandatory social services so that all those in need would receive the necessary assistance within a reasonable time. If Narva city does not have municipal housing to offer, the city must find suitable housing from the lease market. On that basis, § 3(3) and (6) of the Regulation on Grant of Municipal Housing contravene § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA, and § 3 and § 154(1) of the Constitution.

(24) § 4(2) clause 3) of the Regulation on Grant of Municipal Housing

41. Section 4(2) clause 3) of the Regulation on Grant of Municipal Housing gives the right to apply for lease of municipal housing only when the applicant or their family member do not have any outstanding debts for rent or for auxiliary costs nor have violated the internal rules. Under § 19(1) clause 3) of the GPSCA, a person is not entitled to a benefit if in bad faith they violate the main obligation laid down in § 21(1) of the GPSCA or an obligation related to providing benefit or secondary condition for providing benefit arising from the law, in case of which the law establishes termination of the right. If a person was once deprived of the right to benefit but the circumstances have changed and the person needs housing, no basis exists under the law to refuse to provide the service to them. When ascertaining the assistance appropriate for a person, a local authority must proceed from the circumstances of each specific case, assess the person’s need for assistance in its entirety, including their functional capacity and the living environment. Thus, a local authority cannot refuse, without consideration, to grant housing to those who have previously had debts for municipal housing (e.g. the person drew up a payment schedule to pay the debt) or those who have violated the internal rules (e.g. violating the night’s peace once in five years or smoking at a non-designated place). On that basis, § 4(2) clause 3) of the Regulation on Grant of Municipal Housing contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA, and § 3 and § 154(1) of the Constitution.

(25) § 7(4) of the Regulation on Grant of Municipal Housing

42. Under § 7(4) of the Regulation on Grant of Municipal Housing, those applicants for a municipal dwelling and applicants for a municipal apartment who, prior to applying for municipal housing voluntarily deteriorated their living conditions by having accommodated other persons in their dwelling (except spouse, minor children and parents incapacitated for work) will not be registered. At the same time, a local authority has the right and duty to ascertain whether a person together with their family member is a person in need of

assistance in line with § 41(1) of the SWA, and what the justified needs of that person and their family are (§ 43(1) cl. 2) SWA). If local authorities were to have the right to refuse to allocate housing to those wishing to live there together with a cohabitant, an adult child in need of assistance, or other family member, this would interfere seriously with the inviolability of family and private life guaranteed under § 26 of the Constitution. In that case, a person should choose whether to maintain their family and private relationships or to obtain the necessary assistance. On that basis, § 7(4) of the Regulation on Grant of Municipal Housing contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA, and § 3, § 26 and § 154(1) of the Constitution.

(26) § 7(5) of the Regulation on Grant of Municipal Housing

43. Section 7(5) clause 3) of the Regulation on Grant of Municipal Housing, under which people who have voluntarily deteriorated their living conditions may apply for lease of housing only five years after deteriorating their living conditions, contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA, and § 3 and § 154(1) of the Constitution. A local authority may not delay in providing assistance but must provide assistance when a person needs it.

(27) § 19 of the Regulation on Grant of Municipal Housing

44. Under § 19 of the Regulation on Grant of Municipal Housing, a dwelling may be leased for up to three months based on a decision by the administrator of municipal housing stock. Thus, the task of ascertaining a person’s need for assistance and granting the corresponding assistance has been delegated to a legal person in private law (*Sihtasutus Narva Linnaelamu* [Narva City Housing Foundation]), even though the law provides no such possibility. Under § 22(2) of the Local Government Organisation Act, issues placed within the competence of a city or rural municipality must be resolved by the municipal council who may delegate resolution of the issue to the persons or agencies mentioned in § 22(2) of the Local Government Organisation Act. A public function may be delegated to a private person only under the law (§ 3(2) Administrative Cooperation Act). On that basis, § 19 of the Regulation on Grant of Municipal Housing contravenes § 5(1), § 15(1) of the SWA, § 3(2) of the Administrative Cooperation Act, and § 3 and § 154(1) of the Constitution.

(28) § 1(6) of the Debt Counselling Service Regulation

45. Section 1(6) of the Debt Counselling Service Regulation contravenes § 45(1) of the SWA and § 3 and § 154(1) of the Constitution since it imposes different requirements on a debt counsellor than under the law.

By law, a debt counsellor must hold either the profession of a debt counsellor awarded under the Professions Act, or hold higher education and have completed in-service training of a debt counsellor (§ 45(1) SWA). A local authority that fails to comply with the qualification requirements laid down by law has failed to ensure a debt counselling service of the same quality to its residents as ensured for the inhabitants of the rest of Estonia.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS

46. - 89.[not translated]

PROVISIONS CONTESTED

90. Narva City Council Regulation No 6 of 20 February 2014 on “The conditions and procedure for providing home help services in Narva city”, § 3 “Entitled persons”, stipulates:

> “Home help services are provided to adults who, due to their health condition, do not cope with their daily procedures and whose actual residence as well as residence according to the population register is in Narva city and who meet at least one of the following conditions:
>
> 1) they have no legal maintenance providers and their own capacities are insufficient to cope independently and ensure the necessary care;
>
> 2) they have legal maintenance providers but their own health capacities, as well as those of their legal maintenance providers, are insufficient to enable the person to cope independently and ensure the necessary care;
>
> 3) it is impossible to get in contact with their legal maintenance providers.“

91.§ 5 “Providing the service”, subsection (4):

"(4) Services are provided on working days at 8.00 – 20.00 in the total amount of up to 20 hours a week, but not more than 80 hours a calendar month."

92.§ 6 "Financing", subsection (2) clause 2);

"(2) The cost of the service depends on the amount of services provided and the client's income:

[…]

2) 15% of the cost of the service is paid by the client if their income exceeds 50% of the applicable minimum wage."

93. Narva City Council Regulation No 27 of 22 November 2012 on "The procedure for placement in a social welfare institution in Narva city", § 3 "Decision on placement in the institution", subsection (1):

"(1) Persons meeting the conditions set out in subsection (1) ofsection 1[1]of this Regulation will be placed in the institution, whereas, as first priority, persons who have no legal maintenance providers will be placed in the institution."

94.§ 4 "Payment for care", subsection (3) and the first sentence of subsection (4);

"(3) In the case of existence of legal maintenance providers, they pay their own contribution according to the decision of the Social Assistance Board.

(4) If income mentioned in subsections (2) and (3) is insufficient, the person's stay in the institution will be paid for through disposal of the property owned by the person."

95.§ 5 “Exclusion from the institution and change of institution”, subsection (1) clause 1):

“(1) Care in the institution is terminated by a decision of the Social Assistance Board:

1) if the person under care or their legal maintenance providers fail to comply with the conditions of the contract;

[…].”

96. Narva City Council Regulation No 15 of 23 April 2015 on “The procedure for providing the support person service in Narva city”, § 1 “General provisions”, subsection (1):

“(1) This procedure regulates providing the support person service (hereinafter ‘the service’) to persons whose residence, according to population register data, is Narva city and whose actual residence is in Narva city.”

97.§ 2 “Entitled persons”, clauses 1)–3);

“The following persons are entitled to the service:

1) a parent who needs assistance in taking care of a child, i.e. creating a safe and supportive environment for the child and ensuring the family’s coping;

2) a child who needs assistance while in substitute home service, under guardianship, in foster care, or in shelter service, or when leaving the service and setting up an independent life;

3) a person who needs assistance due to their disability, illness or difficult situation which seriously hinders their ability to cope.”

98. Narva City Council Regulation No 26 of 18 December 2014 on “The procedure for establishing care in respect of an adult and appointing a caregiver, and paying the caregiver’s allowance” § 2 “Definitions”, clause 1):

“In this procedure, the following definitions apply:

1) **person under care** means an adult with a mental or physical disability in need of external assistance, guidance and supervision, who, under the Social Benefits for People with Disabilities Act, has been identified as having a moderate, severe or profound disability and whose residence entered in the population register is Narva city;

[…].”

99.§ 4 “Establishing care and appointing a caregiver”, subsection (1):

“(1) Care is established and a caregiver appointed on a proposal of the Social Assistance Board by order of Narva City Government within 30 days as of submitting the application.”

100. Narva City Council Regulation No 23 of 17 June 2010 on “The procedure for providing services to persons of no fixed abode”, § 2 “The definition and types of services”, subsection (3) clause 3):

“(3) The types of services include the following:

[…]

3) safe house service – providing 24-hour temporary shelter which ensures the person a bed, an opportunity to wash and cook, assistance in managing the person’s affairs, and social counselling;

[…].”

101.§ 6 “Safe house service”, subsections (1)–(2):

“(1) Persons whose means of subsistence do not enable them to use or own another dwelling and who have no opportunity to lease municipal housing are entitled to the safe house service.

(2) In providing the service, for 24-hour temporary use persons are ensured at least a bed, an opportunity to wash, an opportunity to cook, assistance in managing the person’s affairs, and social counselling.”

102. Narva City Council Regulation No 12 of 21 March 2013 on “The conditions and procedure for providing the safe house service to children in Narva city”, § 2 “Bringing a child to the service”, subsection (2);

“(2) The person bringing a child to receive the service is obliged to provide their data (name, contact data, if necessary their place of work and occupation) and explain the circumstances that lead to bringing the child to the service. The service provider may always ask for an identity document to verify the personal data of the person bringing the child to receive the service.”

103.§ 3 “Providing the service”, subsection (5):

“(5) The service includes the following activities:

1) ensuring the opportunity for overnight stay and food;

2) if necessary, providing clean underwear and clothes;

3) initial social counselling and psychological assistance;

4) organising provision of medical assistance;

5) ensuring an opportunity to wash;

6) assistance with doing school homework;

7) ensuring a visit to school.”

104. Narva City Council Regulation No 10 of 21 April 2016 on “The procedure for payment of supplementary social benefits in Narva city”, § 1 “General provisions”, the second sentence of subsection (2):

“(2) [---] Benefits are paid within the funds allocated for this in the city budget.”

105.§ 10 “Transport allowance”, subsections (1), (2), (4) and (8):

“(1) The aim of the transport allowance (hereinafter ‘the allowance’) is compensation of expenses related to use of transport in obtaining healthcare or social services.

(2) Eligible for the allowance are persons aged 18 or older with a profound or severe mobility disability who due to their disability are unable to use public transport.

[…]

To obtain the allowance, the applicant or their legal representative must submit to the Social Assistance Board a formal application (Appendix 7) along with the original expense documents and documents proving receipt of healthcare or social services.

[…]

(8) The maximum amount of support is 80 euros a year.”

106. Narva City Council Regulation No 8 of 18 May 2017 on “The procedure for use of funds allocated for financing social services for children with a severe and profound disability”, § 1 “General provisions”, the second sentence of subsection (3):

"(3) [---] The services are financed if relevant funds exist."

107. Narva City Council Regulation No 23 of 18 June 2009 on "The procedure for leasing and using municipal housing", § 3 "The principles for lease of municipal housing", subsections (3) and (6).

"(3) Municipal housing is leased on the basis of a queue, except in the cases mentioned in subsections (5), (6) and (7) of this section, in the case of existence of uninhabited or vacated municipal housing corresponding to the requirements for dwellings and the needs of registered persons.

[…]

(6) Municipal housing is leased outside the queue based on the existence of suitable dwellings:

1) in the case of people being jointly re-accommodated or accommodated in dwellings;

2) proceeding from the interests of Narva city;

3) in the case mentioned in § 3(4) clause 4) of the procedure;[– entered into force 1 September 2010]

4) families recorded in the register of persons applying for a lease of municipal housing who are raising or caring for a child with physical and/or mental disability, whose incapacity for work is at least 80–100%, and /or who has a profound or severe disability;
[– entered into force 1 September 2010]

5) resettling of tenants from one municipal dwelling to another, based on compelling social reasons."

108.§ 4 "Applying for a lease of municipal housing", subsection (2) clause 3):

"(2) Persons mentioned in subsection (1) of this section and their family members wishing to jointly apply for a lease of municipal housing must correspond to the following requirements at the time of applying:

[…]

3) if the applicants or family members living with them are or were previously tenants in a municipal dwelling, they may not have any outstanding debts for rent or for auxiliary costs nor have violated the applicable internal rules of municipal housing.
[– entered into force 1 September 2010]"

109.§ 7 "Processing of applications", subsections (4) and (5):

"(4) Persons and families mentioned in section 4[2] subsection (1) clauses 3), 4) and 7), as well as section 5[3]subsection (1) clause 1) of this procedure will not be registered if they have voluntarily deteriorated their living conditions by the time of applying for lease of municipal housing:

1) [invalid – entered into force 1 September 2010]

2) by having accommodated other persons in their dwelling, except a spouse and minor children and parents incapacitated for work.

(5) In the case mentioned in subsection (4) of this section persons may apply for a lease of housing not earlier than 5 years after deterioration of the living conditions."

110.§ 19 "Distinctions in lease of municipal housing":

"The administrator may conclude a lease contract for municipal housing for a term of up to three months along with the obligation to vacate the dwelling upon expiry of the term of the lease contract if the person applying for a lease of the dwelling has no opportunity to live anywhere because of destruction of their previous dwelling by fire or natural disaster, as well as because of eviction from the previous dwelling or voluntary withdrawal from the lease contract for a municipal apartment. In the cases mentioned in this section, the decision on leasing a dwelling and concluding a temporary lease contract will be made by the administrator."

111. Narva City Council Regulation No 10 of 21 March 2013 on “The procedure for providing the debt counselling service in Narva city”, § 1 “General provisions”, subsection (6):

> “(6) A person may work as debt counsellor if they have higher education in the social sphere or law or if they have completed training in debt counselling.”

OPINION OF THE CHAMBER

112. In her application to the Supreme Court, the Chancellor of Justice seeks a declaration of unconstitutionality and repeal of provisions of Narva City Council regulations, which in the Chancellor’s opinion are in conflict with the law and the Constitution. The Chancellor of Justice also seeks a declaration of unconstitutionality of failure to issue a legislative act, which the law and the Constitution oblige a local authority to issue.

113. The Chamber will first assess the admissibility of the application by the Chancellor of Justice (I) and will deal with general issues necessary to adjudicate the application (II). Then the Chamber will assess the legality and constitutionality of the contested provisions and failure to issue a legislative act (III–XII).

I (Admissibility of the application by the Chancellor of Justice)

114. Under § 2 clause 1) of the Constitutional Review Court Procedure Act, the Supreme Court adjudicates applications for checking the constitutionality of a legislative act or of a failure to issue the act.

115. Section 6(1) clause 1) of the Constitutional Review Court Procedure Act empowers the Chancellor of Justice to apply to the Supreme Court to repeal legislative acts passed by local government bodies. In 2008, the Supreme Court *en banc* found that (similarly to municipal councils) the Chancellor of Justice may contest failure to issue a constitutionally required legislative act through contesting existing regulatory provisions (see Supreme Court *en banc* judgment of 21 May 2008 in case No 3?4?1?3?07 [4], paras 23–35). In view of the subsequent Supreme Court case-law (see Supreme Court *en banc* judgment of 16 March 2010

in case No 3?4?1?8?09 [5]), the Chamber finds that the Chancellor's application contesting the failure to issue a legislative act should also be deemed admissible.

116. The Chancellor of Justice may apply to the Supreme Court after having made a proposal under § 17 of the Chancellor of Justice Act to the body that passed the legislation to bring the contested legal act or its provisions into conformity with the Constitution but the body has failed to do so within 20 days of having received the proposal (§ 18(1) Chancellor of Justice Act).

117. On 17 October 2018, the Chancellor of Justice applied to the Supreme Court seeking a repeal of provisions of Narva City Council regulations on account of their conflict with the laws and the Constitution, as well as failure to issue a constitutionally required legislative act. On 25 August 2017, the Chancellor made a proposal to Narva City Council to bring the contested provisions into conformity with the Constitution and to issue a constitutionally required legislative act, but by the time of submitting the application to the Supreme Court Narva City Council had failed to do so.

118. On the basis of the foregoing, the Chamber is of the opinion that the application by the Chancellor of Justice is admissible and must be examined.

II (General issues)

119. The basic principles of the Estonian Constitution include, inter alia, the principles of the social state and human dignity (§ 10 Constitution) which are also expressed in constitutional social fundamental rights (primarily § 28 Constitution). "The social state and the protection of social rights enshrine the idea of assistance and care to those who are unable to sufficiently secure themselves independently. The human dignity of those persons would be degraded if they were left without the assistance that they need to satisfy their basic needs" (Supreme Court Constitutional Review Chamber judgment of 21 January 2004 in case No. 3?4?1?7?03, para. 14; see also the judgment of 5 May 2014 in case No 3?4?1?67?13, paras 31 and 49).

120. Social protection in Estonia is organised as an integrated system whose parts, after the personal and family's own responsibility, are benefits in cash and in kind organised and granted by local authorities (§ 10(1), § 11 and § 12 General Part of the Social Code Act). Under § 6(1) of the Local Government Organisation Act, one of the functions of a local authority is organising provision of social services, the grant of benefits and other social assistance, as well as welfare services for the elderly, in a rural municipality or city.

121. The Constitution does not prohibit organising social welfare so that functions are divided between the state administration and local authorities. The task of local authorities is to perform public functions as close to people as possible, and § 14 of the Constitution also imposes on local authorities, alongside the legislature, the executive, and the judiciary, a duty to guarantee fundamental rights (see Supreme Court Constitutional Review Chamber judgment of 20 December 2016 in case No 3?4?1?3?16 [6], paras 89 and 90). Regardless of who performs the social welfare function, realisation of fundamental rights and implementation of constitutional principles must ultimately be guaranteed by the legislative power. That is, the law must establish a relevant regulatory framework for provision of social welfare assistance, sufficient funds must be ensured to perform the function, and supervision over performance must be organised, and entitled persons must have an effective opportunity to protect their rights. The Supreme Court *en banc* has found that the state cannot let a situation emerge where the availability of priority public services depends to a large extent on the capability of the local authority of the person's residence or location (cf. Supreme Court *en banc* judgment of 16 March 2010 in case No 3?4?1?8?09 [7], para. 67).

122. The Social Welfare Act divides the duty of providing social assistance between local authorities and the state; Division 2 of Chapter 2 ("Assistance organised by local authorities") lays down social services which local authorities are obliged to organise. Section 5(1) of the SWA obliges the local authority of a person's residence as entered in the population register to organise social services, social benefits, emergency social assistance and other assistance to the person. As a person's needs must be the primary consideration in providing social welfare assistance (§ 3(3) cl. 3) SWA), a local authority must ascertain the need for assistance by the person requesting assistance and determine the corresponding assistance (§ 15(1) SWA).

123. Under § 22(1) clause 5) of the Local Government Organisation Act, establishing the procedure for grant of benefits and for provision of services financed from a rural municipality or city budget falls within the exclusive competence of the municipal council. This duty is further specified in § 14(1) of the SWA obliging local authorities to establish the procedure for providing social welfare assistance which must contain at least the description and financing of social services and benefits and the conditions and procedure for applying for social services and benefits. Thus, the law requires that a local authority must adopt a legislative act regulating organisation of the social services set out in Chapter 2 of the Social Welfare Act with regard to the issues mentioned above. A local authority does not have a statutory duty to regulate all the social services in one legislative act or to issue a legislative act in respect of each specific service. However, it should be borne in mind that regulating the provision of one service in several different acts could disregard the principle of legal clarity (§ 13(2), § 10 Constitution).

124. When regulating organisation of social services a local authority may not contravene the law. This requirement of priority of the law arises from the principle of legality laid down in the first sentence of § 3(1) of the Constitution, as well as § 154 of the Constitution which elaborates on the principle of legality for local authorities. On that basis, a local authority regulation which is contrary to the law, or failure to issue that regulation, contravenes the Constitution (§ 3 and § 154). A local authority's legislative act may interfere with fundamental rights only when a statutory basis for this exists.

125. Above all, account should be taken of the general principles of the Social Welfare Act (first and foremost §§ 3, 5, 14, 15 and 16 SWA), as well as the statutory requirements laid down for each service, and also the provisions of the General Part of the Social Code Act and other Acts. A local authority may not impose restrictions on the right to a service which preclude assistance to people to whom the law requires provision of assistance, or to provide assistance to a smaller extent than laid down by law. Social services which local authorities must organise are related to fundamental rights and freedoms, and if local authorities are unable to provide services on a sufficient level, fundamental rights may be left unprotected (cf. Supreme Court Constitutional Review Chamber judgment of 20 December 2016 in case No 3?4?1?3?16 [6], para. 118).

126. Individual responsibility of a person and family as part of the social protection system means that the primary responsibility for coping with social risks endangering a person lies on the person themselves (§ 5(1) GPSCA), while also taking into account the duty of the family to care for members in need of assistance arising from § 27(5) of the Constitution. The public authority has a constitutional duty to assist those in need when they are unable to ensure sufficient means of subsistence for themselves and their family cannot maintain them.

127. In view of the above principles, the Social Welfare Act also allows charging a fee from service recipients for a service organised by a local authority (first sentence of § 16(1) SWA). A local authority must lay down the conditions and the amount of the fee charged for a social service provided by it (second sentence of § 16(1) SWA). Setting the amount of the fee must take into account, inter alia, the financial situation of the person in need of assistance and their family (§ 16(2) SWA), and the amount of the fee may

not hinder access to the service (§ 16(3) SWA). To the extent that no fee can be charged to a service recipient, the local authority itself must cover the costs of providing the service. In terms of effective protection of fundamental rights, it is essential that the legislator should lay down sufficiently precise rules on how a local authority can determine the amount of the fee charged from a person in need of assistance (including how the financial situation of the person and their family and the extent of the duty of maintenance is measured) and when the duty to pay for a service transfers to the local authority.

128. The Chancellor of Justice in her application contends that the provisions of Narva City Council regulations and failure to issue a legislative act are contrary to the laws, thus contravening the principle of legality. The Chancellor does not express misgivings that the Social Welfare Act or another law concerning the area of social welfare is unconstitutional or that the legislator has failed to issue a constitutionally required legislative act. On that basis, the Chamber will subsequently assess whether the contested provisions in Narva City Council regulations, as well as the contested failure to act, are contrary to the laws and the Constitution to the extent alleged in the Chancellor's application.

III (Home Help Service Regulation)

129. The home help service is one of the social services organised by local authorities as laid down in Chapter 2 of the SWA and regulated in §§ 17–19 of the SWA. The aim of the home help service is to ensure that an adult can independently and safely cope in their home by maintaining and improving their quality of life (§ 17(1) SWA). Provision of the home help service includes assisting a person in activities which the person is unable to perform without external assistance due to reasons relating to state of health, their functional capacity or physical and social environment but which are essential for living at home, such as heating, cooking, cleaning the dwelling, washing clothes and buying food and household articles and managing other affairs outside the dwelling (§ 17(2) SWA).

130. To perform this function, Narva City Council has adopted the Home Help Service Regulation. The Chancellor of Justice contends that the part of the sentence containing the words "and whose actual" in § 3 of the Home Help Service Regulation, as well as § 3 clauses 1)–3), § 5(4) and § 6(2) clause 2) of the Regulation, contravene the law and the Constitution, and seeks their repeal.

(A) Section 3 of the Home Help Service Regulation

131. There is no dispute that the Home Help Service Regulation covers provision of the home help service in Narva city (see § 1 of the Home Help Service Regulation) and § 3 of the Regulation entitles to receive the service a person whose residence according to the population register, as well as their actual residence, is in Narva city. In the opinion of the Chancellor of Justice, § 3 of the Home Help Service Regulation is contrary to the law (§ 3(1) cl. 1), § 5(1), § 15(1) and § 17(1) and (2) SWA) and the Constitution (§ 3 and § 154(1)) since it precludes provision of the home help service to people whose residence according to the population register is in Narva but who in actuality live in another local authority.

132. The core issue of the dispute is whether a local authority also has the duty to organise social services listed in Chapter 2 of the SWA to people whose residence according to the population register is within the boundaries of that local authority but who in actuality live elsewhere.

133. The Social Welfare Act obliges a local authority to provide social services to people whose residence entered in the population register is within the boundaries of the particular local authority (§ 5(1) SWA). Thus, a person becomes entitled to a social service only if their residence data have been entered in the population register. When adopting the current Social Welfare Act in 2015, the legislator's aim was indeed to link provision of social services to a person's registered residence. Section 9(1) of the previously effective Social Welfare Act ('the old SWA') imposed the duty to provide social services on the local authority of the person's residence but it was unclear whether a person's actual residence within the meaning of § 14(1) of the General Part of the Civil Code Act (i.e. the place where a person permanently or primarily lives) or the person's registered residence was meant (see the Draft Social Welfare Act (98 SE, XIII Riigikogu[8]) explanatory memorandum, page 12).

134. Thus, when interpreting the duty of local authorities laid down in § 5(1) of the SWA, the provisions of the Population Register Act (PRA) must be taken into account. Section 68 of the Population Register Act, adopted in 2017 and entering into force at the beginning of this year, imposes a duty on individuals to ensure that their residential address, as well as the address of their minor children and persons under their guardianship, is correctly entered in the population register. Although § 39^1(1) of the previous Population Register Act also obliged a person to ensure the correctness of their residential address entered in the population register, people's registered and actual residence often did not coincide (according to the explanatory memorandum to the Draft Population Register Act (382 SE, XIII Riigikogu[9]), in approximately 12% of cases, see page 2 of the memorandum). Therefore, one of the aims of adoption of the current Population Register Act was to increase pressure on people to submit correct data on their residence to the population register (page 7 of the explanatory memorandum).

135. To achieve this objective, the Population Register Act regulates in more detail than before the situation where a person has more than one permanent or primary residence (§ 65(2) PRA), and the law also exhaustively lists cases where the actual and registered residence may differ. The law also lays down rules

for the situation where a person cannot enter the address of their actual residence in the register because the owner of the dwelling does not consent to this (§ 78(2) PRA). In that case, a local authority has the right and the duty to enter a person's residential address in the register without the consent of the owner of the dwelling (§ 87(4) PRA).

136. Credibility of residence data is important since the data entered in the population register is used for performing public functions (§ 87(4) PRA). It is presumed that the data entered in the register are correct (§ 6(1) PRA) and relying on the register data when performing public functions (e.g. delivering a document) is mandatory (see § 6(2), § 66(1), (4) and (5) PRA). In addition to the registered residence being linked to the duty of the local authority to provide social services, residence also plays a role in allocating money from the state budget to the local authority. Based on people's residence, personal income tax is received (11.93% of the personal income tax of residents is received by the local authority within whose boundaries the individual resides according to the register of taxable persons, see § 5(1) cl.1) and § 5(2) of the Income Tax Act); the number of inhabitants (and thus also the registered residence) is also linked to other allocations from the state budget (e.g. the equalisation fund resources, § 47(2) State Budget Act).

137. In view of the statutory duty imposed on individuals to ensure the correctness of their residence data in the register, as well as the fact that significant public interest exists in the correctness of the data, it is justified to interpret the duty under § 5(1) of the SWA so that social services must be provided to those registered residents who actually live within the administrative boundaries of the particular local authority. That is, a local authority has no obligation to organise social services to those registered residents who live within the administrative boundaries of another local authority, i.e. whose data in the register are not correct. Such an interpretation of § 5(1) of the SWA is more compatible with the constitutional guarantees of local authorities, also ensuring stronger protection of the rights of persons in need of assistance since it enables a local authority to better organise social services (see also Supreme Court Constitutional Review Chamber judgment of 8 March 2011 in case No 3?4?1?11?10[10], para. 58).

138. The law does not lay down clear rules on how the local authority of a person's registered residence could reasonably organise provision of a service within the administrative boundaries of the local authority of the person's actual residence. Under § 5(3) of the SWA, providing social services to a person staying outside their residence entered in the population register may be organised by the local authority within whose administrative boundaries the person is staying in co-ordination with the local authority of the person's registered residence. This provision has no regulatory effect since it does not determine the reciprocal rights or duties of local authorities. Under that provision, the local authority where a person actually resides has no duty to provide social services, nor has the local authority of the person's registered residence the right to request that the other local authority do so. Nor does the law lay down the duty of the local authority of the person's registered residence to pay for services provided to a person outside its administrative boundaries, nor has the local authority which provided a service the right to request compensation of costs from the local authority of the person's registered residence. The opportunity of the local authority of a person's registered residence to organise social services to people living outside its administrative boundaries in a manner described in § 5(3) of the SWA would depend on the complaisance of the local authority where the person actually lives. In addition, the duty to organise social services to people actually living within the administrative boundaries of another local authority may be unreasonably burdensome on the local authority of the person's registered residence, while also being presumably more expensive and administratively more complicated than providing social services within the local authority's

own boundaries.

139.A different interpretation of § 5(1) of the SWA is also not justified by the fact that money to a local authority for providing social services is allocated based on residence data. If a person's registered and actual residence do not coincide, the local authority may use measures laid down in the Population Register Act (Chapter 11) to ensure the correctness of a person's residence data. If a social welfare, medical, rescue, police or other institution finds out that a person is staying permanently within the administrative boundaries of a local authority and is no longer using the residence entered in the population register or their residential address has not been entered in the register, these institutions must notify the local authority of this (§ 85 PRA). The local authority within whose boundaries that person is staying must initiate proceedings to amend the person's residence data in the population register (§ 86 PRA). In these proceedings, it is also possible to enter a person's residential address in the register to the level of accuracy of a town, city, city district or rural municipality (if the person themselves or the owner of the dwelling does not consent (§ 87(2) PRA) or the person's residence is unknown (§ 87(3) PRA). Thus, if the local authority of a person's registered residence finds out in proceedings for providing social benefits or services that the person actually lives within the administrative boundaries of another local authority, the respective local authority must be notified of this and proceedings to amend the residence data must be initiated. If the local authority of the person's registered residence does not provide social services to a person who actually does not live within its boundaries, the latter is more motivated to enter the address of their actual residence in the register. This would better ensure the purpose of the population register to collect reliable information, and state budget allocations would be received by the local authority where the person actually lives and which provides social services to the person.

140. On the basis of the foregoing, the Chamber is of the opinion that § 3 of the Home Help Service Regulation, to the extent contested, does not contravene the law and the Constitution and, by relying on § 15(1) clause 6) of the Constitutional Review Court Procedure Act, dismisses the application by the Chancellor of Justice in this regard.

(B) Section 3 clauses 1)–3) of the Home Help Service Regulation

141. Section 3 clauses 1)–3) of the Home Help Service Regulation restrict the range of people entitled to the home help service in Narva city. The part of the sentence in clause 1) containing the words “and their own capacities are insufficient to cope independently and ensure the necessary care” makes the entitlement dependent on the financial situation of a person in need of assistance. The part of the sentence in clause 1) containing the words “they have no legal maintenance providers” makes the entitlement dependent on the absence of legal maintenance providers. The part of the sentence in clause 2) containing the words “they have legal maintenance providers but [...] health capacities [...] of their legal maintenance providers, are insufficient to enable the person to cope independently and ensure the necessary care” links entitlement to the ability or capacity of maintenance providers to provide assistance. Clause 3) makes the entitlement dependent on whether it is possible to get in contact with the maintenance providers.

142. The Chancellor of Justice contends that the law does not allow imposition of such restrictions on providing the home help service, so that the contested provisions contravene the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 17(1) and (2) SWA, and § 100(1) Family Law Act) and the Constitution (§ 3 and § 154(1)).

143. First, it must be decided what conditions a local authority may impose in order to determine a person’s need for assistance, which is the precondition for receiving the home help service.

144. Determination of the need for assistance, being the underlying precondition for providing social services, must proceed from the statutory provisions on the aim and substance of the specific service. By imposing additional conditions, a local authority may restrict the fundamental rights of a person in need of assistance and their family members, thus failing to achieve the aims of social protection laid down by the legislator.

145. By law, local authorities have the duty to organise provision of social services to those in need of assistance. The Social Welfare Act does not, with regard to any of the services organised by local authorities, lay down the precondition that a person’s financial situation does not enable them to pay for the service. A local authority may charge a fee for social services (including the home help service) (first sentence of § 16(1) SWA). If a service is provided only to people who have insufficient assets, it would not be possible to charge them a fee for the service. On the other hand, all those people with sufficient money to pay for the service would be left without the service. Thus, a local authority may take into account the financial situation of a person in need of assistance only when the issue concerns charging a fee for the service provided to the person or the amount of the fee (§ 16(2) SWA), but not when determining the need for assistance.

146. The Social Welfare Act also does not link the need for assistance in providing social services to whether the person has family members who could care for the person in need instead of the local authority. Although under the General Part of the Social Code Act one part of the system of social protection is the individual responsibility of the person and their family (§ 11 cl. 1) SWA), no law imposes an obligation on

147. In line with the first sentence of § 96(1) of the Family Law Act, adult ascendants and descendants related in the first and second degree are required to provide maintenance (persons required to provide maintenance). Persons entitled to maintenance include descendants or ascendants who need assistance and are unable to maintain themselves (§ 97(3) Family Law Act). Maintenance is generally provided by periodic payments of money (first sentence of § 100(1) Family Law Act). Thus, as a rule, a person entitled to maintenance may claim maintenance in money, and a local authority may not make provision of a social service dependent on the existence of a family member of a person in need or their capacity to care for the person in need. However, a local authority may take into account the family members' financial duty of maintenance and, in setting the amount of a fee for a social service, may also take into account the financial situation of the family of the person in need of assistance (§ 16(2) SWA).

148. In view of the foregoing, § 3 clauses 1)–3) of the Narva Home Help Service Regulation, which make provision of the home service dependent on whether a person's financial abilities to cope are sufficient or whether they have persons required to provide maintenance, contravene § 3(1) clause 1), § 5(1), § 15(1), § 17(1) and (2) of the SWA, and the first sentence of § 100(1) of the Family Law Act. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 3 clauses 1)–3) of the Home Help Service Regulation contrary to § 3(1) (first sentence) and § 154 of the Constitution and repeals them.

(C) Section 5(4) of the Home Help Service Regulation

149. Section 5(4) of the Home Help Service Regulation sets the temporal limits for providing the home help service in Narva city (from 8.00 to 20.00 on working days), as well as the temporal scope (20 hours a week but not more than 80 hours a calendar month). The Chancellor of Justice contends that such a restriction on providing the service is contrary to the law (§ 3(1) cl. 1), § 5(1), § 15(1) and § 17(1) and (2) SWA) and the Constitution (§ 3 and § 154(1).

150. In the case of this provision, three issues are in dispute. First, whether, by using temporal criteria, a local authority may set the scope of the home help service provided to one person, and leave the service unprovided if the scope is exceeded. Second, it should be assessed whether the law allows restricting provision of the home help service only to working days, and third, whether it is allowed to impose restrictions on hours of the day when the service is provided.

151. The Social Welfare Act lays down the overall aim of the home help service and a list with examples of activities necessary when providing the home help service (§ 17(1) and (2) SWA). Thus, the legislator has not set the scope of the home help service either in substance (what kinds of activities are necessary) or amount (how much of the activities forming the substance of the service are necessary, either measured in time or otherwise). Under the Social Welfare Act, social welfare assistance must give primary consideration to a person's need (§ 3(1) cl. 1) SWA), and preference should also be given to measures aimed at finding opportunities and increasing the ability of the person to organise their life as independently as possible (§ 3(1) cl. 1) SWA). Based on these rules, it may be concluded that the home help service must be provided when it is possible to ensure that a person can independently and safely cope at home. However, this possibility depends on the scope of the social service provided by a local authority, i.e. what activities (and to what extent) the local authority deems possible to offer in the frame of the home help service. Determining the scope of the home help service is important primarily when it is necessary to decide whether the home help service or the general care service outside home (§ 20 SWA) will be sought for the person.

152. If a local authority provides the home help service to those in need of assistance, it must do so to the extent corresponding to the person's needs, i.e. ensuring their coping at home independently and safely. That is, a local authority cannot refuse to provide the service to a specific person on grounds that this would exceed the limit on the scope of the service, thus leaving a person without assistance. A local authority may also not impose such general temporal restrictions as may hinder achieving that aim. However, in view of what was said in the previous paragraph of the judgment, a local authority is not prohibited from setting in a legal act with sufficient flexibility the criteria (including quantitative) for assessing a specific person's need for assistance and for deciding what services should be provided to them. The existence of these criteria is necessary for the local authority, inter alia, to plan its activities and budget.

153. Although the temporal scope set out in § 5(4) of the Home Help Service Regulation may in some cases be sufficient to cover a person's need for assistance, it is not ruled out that a person needs (e.g. for a short period) the service in a broader scope. Since the provision restricts the scope of the home help service for one person to 20 hours a week and 80 hours a calendar month, a person in need may be left without assistance. On that basis, the provision contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 17(1) and (2) of the SWA to the extent contested.

154. In view of the aim and essence of the home help service, there is no reason to believe that providing the service in the time frame from 8.00 to 20.00 would hinder achieving the aim of the service. All the activities mentioned in § 17(2) of the SWA are, by nature, of the kind that can be performed during the daytime, and local authorities do not have a statutory duty to provide the home help service round the clock. On that basis, § 5(4) of the Home Help Service Regulation does not contravene the law insofar as it lays down providing the home help service in the period from 8.00 to 20.00.

155. Under § 17(2) of the SWA, in providing the home help service, assistance should, inter alia, be ensured for heating (heating assistance is also laid down as part of the home help service in § 1(1) clause 7) of Narva

City Council Regulation No 10 of 20 March 2016 on “Establishing the list and price of home help services and approving the descriptions of home help services”). As in winter in Estonia it may be necessary to heat a dwelling every day, the home help service must be available every day during that period. A person may also need assistance with heating, which may involve more than simply bringing firewood to the room. On that basis, § 5(4) of the Home Help Service Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 17(1) and (2) of the SWA insofar as it restricts providing the service only to working days.

156. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 5(4) of the Home Help Service Regulation, insofar as it contravenes the law – the parts of the sentence containing the words “on working days” and “in the total amount of up to 20 hours a week, but not more than 80 hours a calendar month” – to be contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it. In line with § 15(1) clause 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application by the Chancellor of Justice insofar as it sought a repeal of § 5(4) of the Home Help Service Regulation to the extent that it lays down provision of the service in the period from 8.00 to 20.00.

(D) Section 6(2) clause 2) of the Home Help Service Regulation

157. Section 6(2) clause 2) of the Home Help Service Regulation lays down that a fee is charged from a service recipient if their income exceeds 50% of the applicable minimum wage, in which case they have to pay 15% of the cost of the service. The Chancellor of Justice contends that the contested provision sets the fee for a service on the level of a legislative act of general application in such a way that the fee may hinder a person in need from obtaining the service, so that the provision contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 16(2) and (3) and § 17(1) and (2) SWA) and the Constitution (§ 3 and § 154(1)).

158. Under the Social Welfare Act, a local authority may charge a fee to people for its services, while establishing the conditions and amount of the fee (first and second sentence of § 16(1) SWA). The amount of the fee depends on the scope and cost of the service and on the financial situation of the person and their family but this may not become a hindrance in obtaining the service (§ 16(2) and (3) SWA).

159. If a local authority sets the amount of the fee as a percentage of the cost of the service, it is not ruled out that the price of the service may become a hindrance to using the service. When setting the amount of the fee the cost of the service established by the local authority is known, the scope of the service needed by a person can also in general be predicted (as it is determined in the course of assessing the need for assistance (§ 15 SWA). However, establishing a fee as a percentage of the cost of the service does not enable taking into account the financial situation of the person and their family, which depends not only on the person's income (proceeds from different sources) but also on assets and liabilities.

160. On that basis, § 6(2) clause 2) of the Home Help Service Regulation contravenes § 3(1) clause 1), § 5(1), § 15(1), § 16(2) and (3), and § 17(1) and (2) of the SWA. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 6(2) clause 2) of the Home Help Service Regulation contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

IV(Social Welfare Institutions Regulation)

161. The general care service provided outside the home is a social service organised by local authorities and regulated in §§ 20–22 of the SWA. The aim of the service is to ensure a safe environment and coping by an adult who is temporarily or permanently unable to cope independently at home due to reasons relating to their state of health, functional capacity or physical and social environment (§ 20(1) SWA).

162. In Narva city, the general care service outside the home is regulated by the Social Welfare Institutions Regulation. Under § 1(1) of the Regulation, the procedure regulates placement in a social welfare institution of elderly and disabled persons in Narva city whose residence according to the Estonian population register is Narva city and for whom care at home cannot be organised. Under § 1(2) of the Regulation, a social welfare institution is an institution operating round the clock where residents are ensured care, nursing and development corresponding to their age and condition.

163. The Chancellor of Justice contends that § 3(1), § 4(4) (first sentence) and § 5(1) clause 1) of the Regulation contravene the law and the Constitution, and seeks their repeal.

(A) Section 3(1) of the Social Welfare Institutions Regulation

164.A need for assistance that gives rise to entitlement to the service is generally regulated in § 1(1) of the Social Welfare Institutions Regulation (the elderly and people with disabilities for whom care at home cannot be organised). Section 3(1) of the Social Welfare Institutions Regulation lays down an additional criterion for assessing the need for assistance, giving first priority to receive the service to persons without legal maintenance providers. In the opinion of Narva City Council, in that case a person's need for assistance is higher, which justifies unequal treatment of those in need. The Chancellor of Justice contends that § 3(1) of the Regulation contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 20(1) SWA, § 100(1) Family Law Act) and the Constitution (§ 3, § 12 and § 154(1)).

165. When assessing the constitutionality of § 3 clauses 1)–3) of the Home Help Service Regulation, the Chamber reached the opinion above that a local authority may not link the right to the home help service to the existence or absence of legal maintenance providers (see paras 146–147 of the judgment above). For the same reasons that the law does not allow setting the absence of legal maintenance providers as a criterion for ascertaining the need for assistance, this ground may also not be used to distinguish between people in need of assistance. In the eyes of the law, these are people in the same situation who may not be treated unequally.

166. In view of the foregoing, part of the sentence in § 3(1) of Narva Social Welfare Institutions Regulation containing the words "whereas, as first priority, persons who have no legal maintenance providers will be placed in the institution" is contrary to § 3(1) clause 1), § 5(1), § 15(1) and § 20(1) of the SWA and the first sentence of § 100(1) of the Family Law Act. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 3(1) of the Social Welfare Institutions Regulation in the part mentioned above contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(B) Section 4(4) (first sentence) of the Social Welfare Institutions Regulation

167. In the case of the general care service outside the home, providing the service must be decided by an administrative act or an administrative contract (§ 21(1) SWA). Narva Social Welfare Institutions Regulation stipulates that the Social Assistance Board will make a decision on providing the service (i.e. a person's placement in an institution) to those in need, also recording the sources of paying the costs of care, including to what extent the costs will be borne by Narva city (§ 3(5) Social Welfare Institutions Regulation). Section 4 of the Social Welfare Institutions Regulation covers in more detail the distribution of the duty to cover costs – first of all, the duty lies with the person in need of assistance and their legal maintenance providers (§ 4(1)), and as to the remaining part with Narva city (§ 4(5)).

168. The contested provision (first sentence of § 4(4) of the Regulation) stipulates that if the income of the person in need of assistance (§ 4(2)) and the contribution paid by legal maintenance providers (§ 4(2) is insufficient to pay for the service, then the service will be paid for through disposal of property owned by the person.

169. In the opinion of the Chancellor of Justice, the first sentence of § 4(4) of the Regulation contravenes the law (§ 16(2) SWA) and the Constitution (§ 3, § 32(2) and § 154(1)) since it interferes with the fundamental right to property of a person in need of assistance without having a legal basis; in addition, the Chancellor refers to § 97 clause 3) of the Family Law Act and § 27(5) of the Constitution. Narva City Council is of the opinion that the contested provision does not interfere with the fundamental right to property since it only lays down a possibility to dispose of property without obliging a person in need to do so.

170. Section 16(1) and (2) of the SWA authorises local authorities to charge a fee for a service from persons in need of assistance and to take into account the person's financial situation, including assets owned by the person when calculating the amount of the fee. Under § 32(2) of the Constitution, everyone has the right to freely possess or use their property or make dispositions regarding it, and limitations on this right may only be provided by law. Section 16 of the SWA does not authorise local authorities to restrict the fundamental right to property of persons in need of assistance so that a local authority could oblige a person in need to dispose of their property.

171. It follows from the wording of the first sentence of § 4(4) of the Regulation that in the event of the existence of the factual circumstances described in that rule (other sources to cover the costs of the service have been exhausted or are insufficient), the legal consequence is the obligation of the person in need to dispose of property owned by them. The interpretation that the provision only informs a person in need about the possibility to dispose of their property would be contrary to the wording of the provision and would cause lack of legal clarity. In the case of different possibilities to interpret legal rules, a constitutionally-compliant interpretation should be preferred, but not at the price of lack of legal clarity (Supreme Court*en banc* judgment of 22 February 2005 in case No 3?2?1?73?04[11], para. 36; judgment of 16 May 2008 in case No 3?1?1?88?07[12], para. 31). The principle of legal clarity guaranteed by § 13(2) of the Constitution protects everyone's fundamental rights from arbitrary restrictions by governmental authority. The principle of legal clarity requires that legal rules should be clear, precise and unambiguous and understandable to people to whom they are addressed.

172. In view of the foregoing, the first sentence of § 4(4) of the Social Welfare Institutions Regulation is contrary to § 16(2) of the SWA. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares the first sentence of § 4(4) of the Social Welfare Institutions Regulation contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(C) Section 4(3) of the Social Welfare Institutions Regulation

173. As already noted above, a person's placement in a social welfare institution and the amount of the fee charged to the person for that service is decided by Narva Social Assistance Board by an administrative act (a decision) (§ 3(5) of the Regulation). The contested provision (§ 4(3) of the Regulation) says that if legal maintenance providers exist, they pay a contribution for the social welfare institution service according to a decision of the Social Assistance Board. The Chancellor of Justice contends that the provision imposes an obligation on maintenance providers to pay for the service, so that it contravenes the law (§ 16(2) SWA and § 97 cl. 3) Family Law Act) and the Constitution (§ 3 and § 154(1)).

174. Since the statutory duty to pay for the service lies on the person in need of assistance (§ 16(2) SWA), a local authority cannot, either by an administrative act or administrative contract, impose the duty to pay for the service on maintenance providers. In that case the administrative act or administrative contract would interfere with the fundamental right to property of a maintenance provider without a legal basis. The law does not authorise local authorities to determine the statutory maintenance obligation and its extent in proceedings for setting the amount of the fee.

175. According to explanations by Narva City Council, the contested provision is compatible with the law since it only regulates the situation where an agreement with maintenance providers has been reached, which is then recorded in an administrative act.

176. Although based on the interpretation given by Narva City Council the provision would be more compatible with the law, such an interpretation would be contrary to the wording of the provision and would not ensure legal clarity. Section 3(5) of the Regulation authorises the Social Assistance Board to decide on the amount of the fee charged for the service, § 4(3) imposes a duty on the maintenance provider to pay for the service to the extent determined in the Board's decision. Thus, the above provisions authorise the Social Assistance Board to decide on the extent to which legal maintenance providers must pay for the service provided to a person in need of assistance. The wording of the contested provision (or other provisions of the Regulation) does not enable the conclusion that the Social Assistance Board only has that right if an agreement on the fee has been reached with legal maintenance providers.

177. Since § 4(3) of the Social Welfare Institutions Regulation authorises the Social Assistance Board to decide on the extent to which legal maintenance providers must pay for the service provided to a person in need of assistance, it contravenes § 16(2) of the SWA and § 97 clause 3) of the Family Law Act. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 4(3) of the Social Welfare Institutions Regulation contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(D) Section 5(1) clause 1) of the Social Welfare Institutions Regulation

178. Section 5(1) clause 1) of the Regulation authorises the Social Assistance Board to decide on terminating service to a person in need if the person or the person's legal maintenance providers fail to comply with the conditions of the contract. The Chancellor of Justice contends that, insofar as the provision allows termination of the service in circumstances not depending on a person in need of assistance, it contravenes the law (§ 3(1) cl. 3), § 5(1), § 15(1), § 20(1) SWA and §§ 18 and 19 GPSCA) and the Constitution (§ 3 and § 154(1)).

179.A local authority may suspend or terminate provision of a service if grounds appear for suspension or termination of the right to benefit under §§ 18 or 19 of the General Part of the Social Code Act (GPSCA). Under § 18(1) clause 2) of the GPSCA, if a person violates the obligation related to provision of benefit or a secondary condition of benefit provision arising from law, the law prescribes termination of the right. Under § 19(1) clause 3) of the GPSCA, the right to benefit terminates if a person in bad faith violates the main obligation laid down in § 21(1) of the GPSCA or an obligation related to provision of benefit or a secondary condition of benefit provision arising from law, in the case of which the law prescribes termination of the right.

180. Since the law links suspension or termination of benefit to the conduct of the benefit recipient, a local authority may not terminate provision of a service for the reason that a service recipient's legal maintenance providers violate the contract entered into with the local authority.

181. In view of the foregoing, part of the sentence in § 5(1) clause 1) of Narva Social Welfare Institutions Regulation containing the words "or their legal maintenance providers" is contrary to § 3(1) clause 1), § 5(1), § 15(1), § 20(1) of the SWA, and § 18 and § 19 of the GPSCA. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 5(1) clause 1) of the Social Welfare Institutions Regulation in the part mentioned above contrary to § 3(1) (first sentence) and § 154 of the

Constitution, and repeals it.

V(Support Person Service Regulation)

182. The support person service is a social service organised by local authorities and regulated in §§ 23–25 of the SWA. To perform this function, Narva City Council has adopted the Support Person Service Regulation, § 1(1) and § 2 clauses 1)–3) of which the Chancellor of Justice seeks to have repealed on account of a conflict with the law and the Constitution.

(A) Section 1(1) of the Support Person Service Regulation

183. The Chancellor of Justice contends that § 1(1) of the Support Person Service Regulation is contrary to the law (§ 3(1) cl. 1), § 5(1), § 15(1) and § 23(1)–(3) SWA) and the Constitution (§ 3 and § 154(1)) since it precludes provision of the support person service to people whose residence according to the population register is in Narva city but who in actuality live in another local authority.

184. The Chamber found above that a local authority has no duty to provide social services to those registered residents who live within the administrative boundaries of another local authority. Thus, in providing a social service, a local authority may impose the condition that the service is provided only to people whose registered and actual residence is within the boundaries of that local authority (see paras 132–139 of the judgment).

185. In view of the foregoing, § 1(1) of the Support Person Service Regulation, to the extent contested in the application by the Chancellor of Justice, is not contrary to the law and, by relying on § 15(1) clause 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application in this regard.

(B) Section 2 clauses 1)–3) of the Support Person Service Regulation

186. The Chancellor of Justice contends that § 2 clauses 1)–3) of the Support Person Service Regulation contravene the law (§ 3(1) cl. 1), § 5(1), § 15(1) and § 23(1)–(3) SWA) and the Constitution (§ 3 and § 154(1)) since it does not enable provision of the support person service to all children and people raising children for whom the law establishes provision of the service as obligatory.

187. When laying down additional legal preconditions in its legislative act for the exercise of statutorily guaranteed rights, a local authority may not restrict the legal positions arising from the law. The law must be taken into account in defining the range of persons entitled (the criteria for assessing whether someone needs assistance) as well as in regulating the substance of the service (what activities a service provider must undertake).

188. The aim of the support person service is to support the ability to cope independently in situations where a person needs significant external assistance in performing their duties and exercising their rights due to social, financial, psychological or health problems (first sentence of § 23(1) SWA). External assistance includes guidance, motivation and development of greater independence and personal responsibility (second sentence of § 23(1) SWA). In providing the support person service to a person raising a child an additional aim is to ensure that the child is cared for and raised in a safe and supportive environment (first sentence of § 23(2) SWA). The aim of providing the support person service to a child is to support the development of the child in co-operation with the person raising the child, including for care procedures in the case of a child with a disability, if necessary (first sentence of § 23(3) SWA).

189. In the opinion of the Chamber, § 2 clauses 1)–3) of the Regulation, which define the range of persons entitled, do not rule out provision of the service in the cases mentioned by the Chancellor of Justice, and thus do not contravene the law.

190. Specifically, the third alternative in § 2 clause 3) of the Regulation (i.e. a person is in a difficult situation which seriously hinders their ability to cope) has been worded so broadly as to allow social, financial, psychological and health problems to be taken into account in assessing a person’s need for assistance, which is not possible in the case of other grounds mentioned in the Regulation. Under § 2 clause 3) of the Regulation the right to the service is also enjoyed by a person raising a child as well as by a child unless they are entitled to the service under § 2 clauses 1) or 2) of the Regulation. The reason is that § 2 clauses 1)–3) of the Regulation are not mutually exclusive alternatives and regulating the rights of a parent and of a child in clauses 1) and 2) does not exclude applying clause 3) in respect of other persons raising the child and in respect of children in other cases.

191. Although assessment of the need for assistance is in essence linked to the aim of a service, the law does not require that the aim of the service should be mentioned in the provision defining the range of persons entitled. The criteria for assessing the need for assistance may be linked to problems which hinder a person's ability to cope or their development. In the opinion of the Chamber, whether the Support Person Service Regulation enables achievement of the aims of the service laid down by law (in the case of a child, in addition to the ability to cope, these also include ensuring the child's development and care procedures in respect of a child with a disability) does not depend on how the Regulation stipulates the range of entitled persons but on how the substance of the service is regulated (see § 4 of the Support Person Service Regulation).

192. In view of the foregoing, § 2 clauses 1)–3) of the Support Person Service Regulation, to the extent contested in the application by the Chancellor of Justice, are not contrary to the law and, by relying on § 15(1) clause 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application in this regard.

VI (Establishment of Care Regulation)

193. Care of an adult is a social service organised by local authorities laid down in § 26 of the SWA. Care is established based on an application by a person who, due to their mental or physical disability, needs assistance in performing their duties and exercising their rights (first sentence of § 26(1) SWA).

194. Narva City Council has adopted the Establishment of Care Regulation, § 2 clause 1) and § 4(1) of which the Chancellor of Justice seeks to have repealed on account of a conflict with the law and the Constitution.

(A) Section 2 clause 1) of the Establishment of Care Regulation

195. The Chancellor of Justice contends that part of the sentence in § 2 clause 1) of the Establishment of Care Regulation containing the words “who, under the Social Benefits for People with Disabilities Act, has been identified as having a moderate, severe or profound disability” contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 26(1) SWA) and the Constitution (§ 3 and § 154(1)).

196. The dispute is over whether a local authority may provide the service of establishment of care of an adult only to those people with a disability in respect of whom the Social Insurance Board has identified a degree of disability.

197. Section 26(1) of the SWA lays down a duty to provide the service to a person who, due to mental or physical disability, needs assistance in performing their duties and exercising their rights. Thus, the law does not link the need for assistance, which is the precondition for providing the service, to whether the Social Insurance Board has identified the person as having a moderate, severe or profound disability in line with the procedure laid down in the Social Benefits for People with Disabilities Act. The Chamber concedes that the Social Welfare Act uses the term disability and its degrees inconsistently, which may render it more difficult for local authorities to implement the law. The degree of disability may be used in ascertaining the need for assistance and set as a precondition for benefit if the law explicitly sets out such a possibility (see, e.g., § 45^2 (2) SWA). Otherwise, a local authority rules out providing the service to people in need for whom the law establishes provision of the service as obligatory.

198. On that basis, the Chamber is of the opinion that the part of the sentence in § 2 clause 1) of the Establishment of Care Regulation containing the words “who, under the Social Benefits for People with Disabilities Act, has been identified as having a moderate, severe or profound disability” contravenes § 3(1) clause 1), § 5(1), § 15(1) and the first sentence of § 26(1) of the SWA). Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 2 clause 1) of the Establishment of Care Regulation in the part mentioned above contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(B) Section 4(1) of the Establishment of Care Regulation

199. Under § 4(1) of the Establishment of Care Regulation, care is established and a caregiver appointed on a proposal by the Social Assistance Board by order of Narva City Government within 30 days of submitting the application.

200. Section 25(1) of the General Part of the Social Code Act imposes a duty on the benefit provider to decide on providing benefit within ten working days from submission of a proper application unless the law lays down a different time limit. Thus, § 4(1) of the Establishment of Care Regulation lays down a longer time limit for processing an application for benefit than stipulated by the General Part of the Social Code Act.

201. The Chamber is of the opinion that part of the sentence in § 4(1) of the Establishment of Care Regulation containing the words “within 30 days as of submitting the application” is contrary to § 25(1) of the General Part of the Social Code Act. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 4(1) of the Establishment of Care Regulation in the part mentioned above contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

VII(Failure to regulate the procedure for providing the personal assistant service)

202. The Chancellor of Justice contends that it is contrary to the law (§ 14(1) and § 27(1) and (2) SWA) and the Constitution (§ 3 and § 154(1)) that Narva city has failed to regulate the procedure for providing the personal assistant service.

203. The law imposes on local authorities the duty to organise provision of social services laid down in Division 2 of Chapter 2 of the Social Welfare Act (see paras 123–127 of the judgment).To do this, a local authority must lay down the procedure for providing social welfare assistance which must contain at least the description and financing of social services and benefits and the conditions and procedure for applying for them (§ 14(1) SWA). Issues placed within the competence of local authorities by legislation are decided by the municipal council in the name of the local authority (§ 22(2) Local Government Organisation Act).

204. The personal assistant service is a social service provided by local authorities and regulated in §§ 27–29 of the SWA. The personal assistant service is intended for adults needing external physical assistance due to disability. The aim of the service is to increase the person’s ability to cope independently and their participation in all areas of life and reduce the care burden of their legal caregivers (§ 27(1) SWA). A personal assistant assists the service recipient in activities where the person needs external physical assistance due to disability – in the person’s everyday life activities, such as moving about, eating, cooking, clothing, hygiene, housework and other activities in which the person needs guidance or external assistance (§ 27(2) SWA). The personal assistant service may not be provided directly by a person who is an ascendant

or descendant of the service recipient related in the first or second degree (§ 29(2) cl. 2) SWA); or a person who is permanently living in the same dwelling with the service recipient (§ 29(2) cl. 3) SWA).

205. In the instant case, the dispute is over whether Narva City Council has regulated the personal assistant service to adults in Narva city to the extent required by law. The Regulation on Financing Social Services for Children with Disability, which regulates the use of funds allocated for financing social services for children with a severe and profound disability (about that Regulation, see Part VIII of the judgment), also mentions the personal assistant service among the services (see § 2(1) cl. 2) of the Regulation). The Social Welfare Act does not establish provision of the personal assistant service for children as obligatory.

206. Narva city lacks a legislative act to regulate provision of the personal assistant service to adults – laying down the description of the service and regulating applying for and financing the service. The fact that the aim and substance of the service has been described in the law does not relieve a local authority from the duty to regulate the service to the extent required by § 14(1) of the SWA.

207.A local authority is also not relieved of the duty to regulate the personal assistant service if the local authority has regulated the personal care service for adults. Personal care of adults (§ 26 SWA) is a service intended for adults with a disability, the aim of which is worded (due to their disability, a person needs assistance in exercising their rights and performing their duties) similarly, first of all to the support person service (§ 23 SWA). The support person service is an enabling service intended, inter alia, for people with a disability (in the frame of this service, physical assistance is provided only to a child with a disability for whom the law does not stipulate the personal assistant service). At the same time, the aim of care of a person is worded so broadly in the law that it does not exclude the possibility to include the aim of the personal assistant service intended for providing external physical assistance to a person. Unlike in the case of the support person service and the personal assistant service, the law does not restrict the range of persons who may directly provide the care service for an adult (see § 25(2) and § 29(2) SWA).

208. Regardless of the similarity of the above social services, a local authority must regulate all social services which the law obliges it to provide. The law does not prohibit regulation of several services in the same legislative act, but in that case it must be indicated which services required by law are being regulated. If no such indication is provided, it is not possible to understand which requirements laid down by law apply to the specific service, in particular if the municipal council does not consider it necessary to reproduce the provisions of the law.

209. Based on the foregoing and relying on § 15(1) clause 2^{1}) of the Constitutional Review Court Procedure Act, the Chamber declares failure to issue a legislative act to regulate provision of the personal assistant service in Narva city unconstitutional.

VIII (Regulation on Financing Social Services for Children with Disability)

210. The Chancellor of Justice contends that the second sentence of § 1(3) of the Regulation on Financing Social Services for Children with Disability contravenes the law (§ 3(1) clause 1), § 5(1), § 15(1), § 16(2) and (3), § 23(1)–(3), § 38(1), § 42, § 45^{1}(1), § 45^{2}(2) of the SWA and § 10 of the Preschool Child Care Institutions Act) and the Constitution (§ 3 and § 154(1)).

211. The Regulation on Financing Social Services for Children with Disability regulates several social services which the Social Welfare Act obliges local authorities to provide to people with a disability (including children): child care service (§ 45^{1} SWA), support person service (§ 23 SWA), transport service for people with a disability (the social transport service laid down in § 38 SWA) and the adaptation of a dwelling service (guaranteed housing service laid down in §§ 41 and 42 SWA) (see § 2(1) clauses 1), 3), 5) and 6) of the Regulation). The framework under the Regulation concerns providing these services to children with a severe and profound disability (see § 1(1) and (2) and § 2(1) of the Regulation).

212. In line with the second sentence of § 1(3) of the Regulation, the services are financed if relevant funds exist. In the opinion of the Chancellor of Justice, the contested provision determines to what extent the local authority covers the costs of providing the services mentioned in the Regulation (child care service, support person service, social transport service, guaranteed housing service) to children with a severe and profound disability. Since in the absence of funds the costs will be left for the person in need to bear, the fee charged for the service may be too high and hinder access to the service.

213. Thus, the dispute in the instant case concerns the issue whether the second sentence of § 1(3) of the Regulation restricts availability of the child care service, support person service, social transport service and guaranteed housing service for children with a severe and profound disability.

214. According to § 1(1) of the Regulation, it regulates social services for children with a severe and profound disability, and payment for the services, from funds allocated to Narva city budget from the state budget. The header of the Regulation refers to § 156(3^1)–(3^3) of the SWA which regulates support allocated from the state budget, if possible, to local authorities for providing assistance to children with a severe and profound disability.

215. In view of the scope of the Regulation, the Chamber is of the opinion that the contested provision only determines how support allocated from the state budget for children with a severe and profound disability is used to provide the social services mentioned in the Regulation. Thus, the provision does not regulate provision of the services but financing of provision of the services laid down in the Regulation. The legal consequence of the contested provision is not that the services in question are not provided in the absence of funds allocated from the state budget. Establishing the contested regulatory framework for provision of the social service does not contravene the law.

216. Availability of the service to a child with a severe and profound disability could be restricted if Narva city were to have no legislative act regulating provision of the service if no funds allocated from the state budget exist or are insufficient to cover all the needs for assistance. Arguments in the application by the Chancellor of Justice are, indeed, based on the premise that the contested Regulation exhaustively regulates provision of services to children with a severe and profound disability. In the opinion of the Chamber, it is not ruled out that, for example, the support person service to children with a severe and profound disability could also be provided under the Support Person Service Regulation. Regardless of the assessment of whether and what regulatory framework exists in Narva city for providing services to children with a severe and profound disability, the contested provision does not preclude provision of the service on other legal grounds. In the situation where the Chancellor of Justice believes that social services for children with a severe and profound disability have been insufficiently regulated in Narva city, it is possible to contest provisions that restrict providing the services, or contest the absence of the appropriate regulatory provisions.

217. Based on the foregoing, the Chamber is of the opinion that the second sentence of § 1(3) of the Regulation on Financing Social Services for Children with Disability does not restrict availability of services for children with a severe and profound disability mentioned in the Regulation, and in this part does not contravene the law. Relying on § 15(1) clause 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application by the Chancellor of Justice in this regard.

IX (Regulation on Grant of Municipal Housing)

218. The guaranteed housing service is a social service organised by local authorities and regulated in §§ 41–43 of the SWA. The aim of the service is to ensure the possibility to use a dwelling for a person who due to their socio-economic situation is unable to ensure a dwelling corresponding to the needs of the person and their family (§ 41(1) SWA). In the case of a person with a disability, this may include assistance in adapting a dwelling to be more suitable (first alternative in § 42(1) SWA) or obtaining a more suitable dwelling.

219. In this judgment, the term "guaranteed housing" will be used in the narrow sense, i.e. ensuring the possibility to use a dwelling within the meaning of the second alternative (assisting a person with a disability in obtaining a suitable dwelling) in § 41(1) and § 42(1) of the SWA. Thus, the term used in the narrow sense does not cover adaptation of a dwelling for a person with a disability (the first alternative in § 42(1) SWA).

220. Narva City Council has regulated provision of the guaranteed housing service in the Regulation on Grant of Municipal Housing. The Chancellor of Justice seeks repeal of § 3(3) and (6), § 4(2) clause 3), § 7(4) and (5), and § 19 of the Regulation on Grant of Municipal Housing to the extent contested, on account of their conflict with the law and the Constitution. The Regulation on Grant of Municipal Housing, in addition to providing the guaranteed housing service, also regulates other instances where Narva city leases dwellings owned by it. The provisions of the Regulation are in dispute in the instant case only insofar as concerns providing the guaranteed housing service.

(A) Section 3(3) and (6) of the Regulation on Grant of Municipal Housing

221. In the opinion of the Chancellor of Justice, § 3(3) and (6) of the Regulation contravene the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 41(1) and § 42(1) SWA) and the Constitution (§ 3 and § 154(1)) insofar as they stipulate lease of housing when vacant space is available.

222. The law obliges local authorities to ensure the possibility for those in need of assistance to use a dwelling. The law does not specify how this obligation should be fulfilled. The explanatory memorandum to the Draft Social Welfare Act notes that a local authority may give a dwelling owned by it to use by a person in need of assistance, to intermediate an apartment for the person from the leased housing market, and to assist in making the first down payment (page 40 of the explanatory memorandum). Thus, a local authority may choose how it provides the guaranteed housing service but when it regulates provision of the service, availability of the service to those in need should be ensured.

223. Narva city provides the guaranteed housing service so that it leases a dwelling owned by the city (municipal housing) to a person in need of assistance. Municipal housing is leased on the basis of a queue to persons registered as applicants, or outside the queue (§ 3(3), (5), (6) and (7) of the Regulation). In both cases, the Regulation sets the condition that a dwelling is leased if a vacant dwelling exists – "in the case of existence of uninhabited or vacated municipal housing corresponding to [...] the needs of registered persons" (§ 3(3) of the Regulation) and "based on the existence of suitable dwellings" (§ 3(6) of the Regulation). Since no other legislative act regulates provision of the guaranteed housing service in Narva city, the Chamber proceeds from the premise that provision of the service is possible only in the cases and on conditions laid down in the Regulation on Grant of Municipal Housing.

224. There is no dispute that if a local authority organises provision of the guaranteed housing service by lease of housing owned by it, it can provide the service only by leasing dwellings which are owned by it and are vacant. However, absence of vacant dwellings should not be a reason to exclude provision of the guaranteed housing service to persons who have a statutory right to the service (i.e. the need for assistance has been ascertained). Therefore, even when in general the service is provided by lease of local authority dwellings, rules should also be laid down for providing the service in a situation where no vacant dwellings exist. In that situation, purchasing more dwellings by the local authority might not be sufficient since, as a rule, this would be difficult to accomplish within the statutory time limit for providing the service. Absence of the relevant regulatory provisions contravenes the statutory obligation of a local authority to provide the guaranteed housing service to a person based on the person's need for assistance (§ 3(1) cl. 1), § 5(1), § 15(1), § 41(1) and § 42(1) SWA).

225. In view of the foregoing, the Chamber agrees with the reasoning by the Chancellor of Justice but finds that it is not § 3(3) and (6) of the Regulation on Grant of Municipal Housing which are contrary to the law but, instead, absence of regulatory provisions. The law does not prohibit provision of the guaranteed housing service by lease of a dwelling owned by a local authority and also setting the existence of vacant dwellings as a condition. What is contrary to the law is the absence of rules for the situation when no vacant dwellings exist, because in that case providing the guaranteed housing service depends on how many dwellings the local authority owns. Relying on § 15(1) clause 2^1) of the Constitutional Review Court Procedure Act, the Chamber declares unconstitutional the failure to issue a legislative act to regulate provision of the guaranteed housing service in Narva city in instances where a local authority does not have vacant housing owned by it.

(B) Section 4(2) clause 3) of the Regulation on Grant of Municipal Housing

226. The Chancellor of Justice contends that § 4(2) clause 3) of the Regulation on Grant of Municipal Housing contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 41(1) and § 42(1) SWA) and the Constitution (§ 3 and § 154(1)).

227. By defining the range of persons who may apply for lease of municipal housing, § 4 of the Regulation regulates the conditions for benefit (the guaranteed housing service). Section 4(2) clause 3) of the Regulation excludes the right to benefit of a person who themselves or whose family member has previously leased a municipal dwelling and has outstanding debt for rent or for auxiliary costs incurred in that lease relationship (the first alternative). Section 4(2) clause 3) of the Regulation excludes the right to benefit also when a benefit applicant or their family member has violated internal rules while leasing a municipal dwelling (the second alternative).

228. Both the Chancellor of Justice and Narva City Council, when interpreting § 4(2) clause 3) of the Regulation, cite the provisions of the General Part of the Social Code Act regulating termination of the right to benefit if the benefit recipient violates their duties (§ 21(1) of the GPSCA lays down the main obligations of a benefit recipient; under § 19(1) cl. 3) the right to benefit terminates if the person in bad faith violates the main obligations, obligations related to provision of benefit, or a secondary condition of providing benefit). The Chamber notes, however, that in the instant case the issue in dispute is not whether the factual circumstances mentioned in § 4(2) clause 3) of the Regulation may lead to termination of the right to benefit under § 19(1) clause 3) of the General Part of the Social Code Act. That is the issue of termination of the previous lease relationship between Narva city and an applicant or their family member.

229. In this instant case, the issue in dispute is whether the circumstances mentioned in § 4(2) clause 3) of the Regulation could constitute a condition excluding the grant of benefit.

230. The Social Welfare Act does not allow imposition of circumstances related to the applicant's own previous lease relationship as a condition precluding the grant of benefit, or circumstances related to the previous lease relationship of their family member. That conclusion arises from the provisions of the Social Welfare Act requiring that the applicant's need for assistance must be the basis for deciding on providing the service (§ 3(1) cl. 3), § 15(1) SWA). The need for assistance changes over time, i.e. it must be assessed at the moment of granting benefit (providing the service). If a local authority refuses to provide the service because of circumstances related to a previous lease relationship, but the applicant has a need for assistance, then providing the service to the person in need of assistance is not ensured to the extent prescribed by law.

231. Section 4(2) clause 3) of the Regulation on Grant of Municipal Housing makes the right to the guaranteed housing service dependent on circumstances related to the applicant's own or their family member's previous lease relationship and does not enable the applicant's need for assistance at the time of applying to be taken into account.

232. The Chamber finds that § 4(2) clause 3) of the Regulation on Grant of Municipal Housing contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA insofar as it restricts provision of the guaranteed housing service laid down in the Social Welfare Act. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 4(2) clause 3) of the Regulation on Grant of Municipal Housing, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(C) Section 7(4) of the Regulation on Grant of Municipal Housing

233. The Chancellor of Justice contends that § 7(4) of the Regulation on Grant of Municipal Housing contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 41(1) and § 42(1) SWA) and the Constitution (§ 3, § 26 and § 154(1) since it restricts the right of a person in need of assistance to receive the service and to live with their family members. In the opinion of Narva City Council, the contested provision does not give rise to restrictions in leading a family life.

234. When providing the guaranteed housing service, the needs of the person in need of assistance and of their family must be taken into account. That obligation arises from § 41(1) of the SWA, laying down the aim of the service, as well as from § 43 of the SWA (see subsection (1) clause 2)), laying down the requirements for dwellings. These provisions protect the constitutional right of a person in need of assistance to the inviolability of their family life (§ 26 and § 27(1) of the Constitution). If only the needs of the applicant for service are taken into account in providing the guaranteed housing service, while leaving aside the needs of the family, this restricts the right of the person in need of assistance to lead a family life.

235. Thus, when providing the guaranteed housing service, a local authority (benefit provider within the meaning of § 15 GPSCA) must also ascertain the needs of the applicant’s family when assessing the applicant’s need for assistance. Information on an applicant’s family ties constitutes essential circumstances for granting benefit, regarding which the benefit applicant is obliged to provide truthful data and evidence to the local authority (§ 21(1) cl. 1) GPSCA). There is no dispute that if the data on family relationships submitted by the applicant is not correct, they might not be entitled to the service or might not receive it to the extent requested by them, since the applicant does not meet the condition for benefit (§ 23(4) GPSCA). In that case, the applicant has also violated the main obligation for applying for benefit, which may lead to suspension or termination of the right to benefit (§ 18(1) cl. 2) and § 19(1) cl. 3) GPSCA).

236. The dispute in the instant case is over whether § 7(4) of the Regulation lays down any conditions for benefit which the law does not allow a local authority to impose in providing the guaranteed housing service.

237. Section 7(4) clause 2) of the Regulation on Grant of Municipal Housing precludes satisfying an application if the applicant accommodates in their dwelling a person who is not their spouse, minor child or a parent incapacitated for work. The provision lays down a condition for benefit which precludes entitlement to benefit if the applicant lives together with a person not mentioned in the provision as this is deemed to amount to voluntary deterioration of one's living conditions. The Chamber does not agree with the position of Narva City Council that the list of persons set out in the provision is not exhaustive and the provision also allows receiving benefit when an applicant lives with a person not mentioned in the provision. The wording of the provision does not support that interpretation and does not leave a margin of appreciation.

238. The definition of family is not laid down in the Constitution, nor is it provided in any law. The Supreme Court has held that the right to the inviolability of family life means the right to maintain family ties in their broadest sense, including the right to live together (see Supreme Court*en banc* judgment of 21 June 2019 in case No 5?18?5[13]/17, para. 47). Also the Social Welfare Act, which obliges the needs of the family to be taken into account, does not delimit the range of persons belonging to the family whose needs must be taken into account when ascertaining the need for assistance. However, a local authority may restrict fundamental rights only on the basis of and to the extent laid down in the delegating rule provided by law. Thus, when regulating the service a local authority may not restrictively define the range of family members whose needs have to be taken into account when ascertaining the need for assistance, and make provision of the service dependent on that.

239. Section 7(4) clause 2) of the Regulation on Grant of Municipal Housing provides entitlement to the guaranteed housing service only when the person in need of assistance lives alone or together with their spouse, minor child or a parent incapacitated for work. The provision does not enable the needs of the applicant's family to be taken into account to the extent laid down by law when providing the service and interferes unconstitutionally with the constitutional right to the inviolability of family life of a person in need and their family members. The Chamber finds that § 7(4) clause 2) of the Regulation on Grant of Municipal Housing contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA insofar as it restricts providing the guaranteed housing service laid down in the Social Welfare Act.

240. In view of the foregoing and relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 7(4) clause 2) of the Regulation on Grant of Municipal Housing, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(D) Section 7(5) of the Regulation on Grant of Municipal Housing

241. The Chancellor of Justice contends that § 7(5) of the Regulation on Grant of Municipal Housing contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 41(1) and § 42(1) SWA) and the Constitution (§ 3 and § 154(1)) since it precludes assessment of a person's need for assistance.

242. First of all, the dispute involves the issue whether § 7(5) of the Regulation on Grant of Municipal Housing lays down a condition allowing the application to be denied, thus laying down a condition precluding the right to benefit. Secondly, the dispute is over whether laying down such conditions is compatible with the law.

243. Section 7(5) of the Regulation lays down a time limit (five years) during which a person may not apply for the benefit if they had been previously refused benefit for the reason that they had voluntarily deteriorated their living conditions (§ 7(4) of the Regulation).

244. The Chamber does not agree with the position of Narva City Council that § 7(5) of the Regulation has no legal effect since a local authority cannot refuse to process an application on the basis of it. It is true that the law does not authorise a local authority to refuse to examine an application but § 7(5) of the Regulation essentially lays down a basis for refusing the proceedings and denying the application. Thus, § 7(5) of the Regulation lays down a condition for benefit which allows refusal to grant benefit if the condition is not met.

245. Although the law allows refusal to grant benefit if an applicant submits false information about circumstances essential for granting benefit, which may also lead to suspension or termination of the right to benefit (see para. 235 of the judgment above), the Social Welfare Act does not allow imposition of these circumstances as a condition for benefit when the person applies for benefit anew. That conclusion arises from the provisions of the Social Welfare Act requiring that the need for assistance must be the basis for deciding on providing the service (§ 3(1) cl. 3), § 15(1) SWA). The need for assistance changes over time, i.e. it must be assessed at the moment of applying for the service.

246. Section 7(5) of the Regulation on Grant of Municipal Housing makes the right to the guaranteed housing service dependent on whether the applicant has been refused the service during the last five years for the reason that they voluntarily deteriorated their living conditions. The provision does not enable the applicant's need for assistance at the time of applying to be taken into account, so that the person may be left without the necessary service. The Chamber finds that § 7(5) of the Regulation on Grant of Municipal Housing contravenes § 3(1) clause 1), § 5(1), § 15(1), § 41(1) and § 42(1) of the SWA insofar as it restricts

providing the guaranteed housing service laid down in the Social Welfare Act.

247. In view of the foregoing and relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 7(5) of the Regulation on Grant of Municipal Housing, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution and repeals it

(E) Section 19 of the Regulation on Grant of Municipal Housing

248. The Chancellor of Justice contends that § 19 of the Regulation on Grant of Municipal Housing contravenes the law (§ 5(1) and § 15(1) SWA and § 3(2) of the Administrative Cooperation Act) since it authorises a legal person in private law to decide on a person's need for assistance and grant the corresponding assistance.

249. Section 19 of the Regulation lays down that in some cases of lease of municipal housing the administrator may decide on lease of a dwelling instead of the city government. The administrator may decideon lease of a municipal dwelling if a person has no opportunity to live anywhere because of destruction of their previous dwelling by fire or natural disaster, as well as because of eviction from the previous dwelling or voluntary withdrawal from the lease contract for a municipal apartment. In those cases, the administrator may decide to lease a dwelling for a term of up to three months along with the obligation to vacate the dwelling upon expiry of the lease contract. In the opinion of the Chamber, § 19 of the Regulation may also apply in cases where a dwelling is leased for the purpose of providing the guaranteed housing service. Thus, in cases laid down in § 19 of the Regulation, provision of the service (granting benefit) is decided by the administrator.

250. Under § 2 clause 7) of the Regulation, the administrator of the municipal housing stock is a person to whom Narva city has under a relevant contract transferred administration of municipal housing owned by Narva city. In Narva city, the municipal housing stock is administered by theNarva Linnaelamu Foundation. Thus, by § 19 of the Regulation, Narva City Council has authorised a legal person in private law to decide on granting benefit.

251. Under § 5(1) of the SWA, a local authority is obliged to organise provision of social services. Section 15(1) of the SWA imposes an obligation on a local authority to ascertain a person's need for assistance and the corresponding assistance. Under § 23(1) of the GPSCA, benefit is granted by an administrative act, administrative contract or action by the benefit provider.

252. The municipal councilmay, in the name of the local authority, delegate resolution of issues placed within the competence of local authority to the rural municipality or city government or rural municipality or city district representative body, administrative agency, structural unit or official of an agency appointed by the municipal council (§ 22(2)Local Government Organisation Act). By an administrative act issued on the basis of law or by an administrative contract entered into on the basis of law (§ 3(2) and (4) Administrative Cooperation Act) a local authority may authorise a legal or natural person to perform an administrative duty assigned by law to the local authority .The Chamber agrees with the Chancellor of Justice that the law does not empower a local authority to delegate to a legal person in private law the authority to decide whether the guaranteed housing service should be provided to a person in need of assistance.

253. In view of the foregoing, the Chamber is of the opinion that § 19 of the Regulation on Grant of Municipal Housing contravenes § 5(1), § 15(1) of the SWA and § 3(2) of the Administrative Cooperation Act insofar as it authorises a legal person in private law to decide on providing the guaranteed housing service. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 19 of the Regulation on Grant of Municipal Housing, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

X (Supplementary Social Benefits Regulation)

254. The social transport service is a local authority social service regulated in §§ 38–40 of the SWA. The aim of the service is to enable a person with a disability within the meaning of § 2(1) of the Social Benefits for People with Disabilities Act, and whose disability hinders the use of a personal or public transport vehicle, to use a means of transport which corresponds to their needs in order to get to work or an educational institution or use public services.

255. Narva City Council Supplementary Social Benefits Regulation stipulates payment of the transport allowance for an adult with a profound or severe mobility disability to compensate their transport expenses (§ 2(8) and § 10 of the Regulation).

256. In the opinion of the Chancellor of Justice, Narva city has failed to establish the description of and the procedure for applying for the social transport service (contrary to § 14(1) SWA), but payment of the transport allowance laid down in the Supplementary Social Benefits Regulation should be seen as local authority participation in covering the costs of the social transport service under § 16 of the SWA. Moreover, in the opinion of the Chancellor of Justice, financing the service has been incorrectly regulated. The

Chancellor finds § 10(1) and (2) of the Supplementary Social Benefits Regulation to be contrary to the law also for the reason that payment of the transport allowance has not been stipulated for everyone for whom the law establishes provision of the social transport service as obligatory (excluded are some adults with a disability and children with a disability for whom providing the service is not regulated by other Narva City Council and City Government regulations) for travel to all the destinations required by law. On that basis, in the opinion of the Chancellor of Justice, § 1(2) (second sentence) and § 10(1), (2), (4) and (8) of the Supplementary Social Benefits Regulation contravene § 3(1) clause 1), § 5(1), § 15(1) and § 38(1) of the SWA. Section 1(2) (second sentence) and § 10(8) of the Regulation additionally contravene § 16(2) and (3) of the SWA and § 10(4) of the Regulation contravenes § 16(3) of the SWA. The Chancellor of Justice seeks a declaration of conflict of these provisions, to the extent contested, with § 3 and § 154(1) of the Constitution, and their repeal.

257. As explained above (see paras 123–125 of the judgment), the law imposes on a local authority the obligation to organise provision of social services laid down in Division 2 of Chapter 2 of the Social Welfare Act. To do this, a local authority must lay down the procedure for providing social welfare assistance (a legislative act) which must contain at least the description and financing of social services and benefits and the conditions and procedure for applying for them (§ 14(1) SWA). In line with the second sentence of § 16(1) of the SWA, a local authority must also lay down the conditions and the amount of the fee charged for a social service provided by it.

258. The duty of a local authority to organise provision of the social transport service means creating conditions so that that a person with a disability living within the boundaries of the local authority should be ensured transport corresponding to the specific nature of their disability. A local authority is not required to provide the social transport service itself but it must ascertain the person’s need for assistance (including the extent to which the person needs the social transport service) and find a suitable transport option for them (if necessary, create it or intermediate suitable transport for the person in need offered on the transport service market) (providing benefit in kind within the meaning of § 12(1) clause 2 of the GPSCA). If necessary, the transport service should also be provided if the financial situation of the person in need enables them to pay for suitable transport. Whether and to what extent a service recipient may be charged a fee for the service should be decided only after ascertaining the need for assistance.

259. Therefore, when organising provision of the social transport service, a local authority cannot limit itself only to paying support for using the transport (i.e. organising the service should not amount merely to granting benefit in cash within the meaning of § 12(1) clause 1) of the GPSCA). Not all those in need of assistance might have a possibility to use services offered on the transport service market for social transport, for example no suitable service providers exist within the boundaries of the local authority or the person has no money to pay for the service, so that they might be left without assistance. Absence of the relevant regulatory provisions is therefore contrary to the duty arising from § 3(1) of the SWA to provide the service based on a person’s need for assistance (clause 1)) and to ensure that measures of assistance are as accessible for the person as possible (clause 6)), as well as §§ 14, 15 and 16 of the SWA.

260. However, the Chamber finds that the contested provisions in the Supplementary Social Benefits Regulation do not regulate provision of the social transport service within the meaning of §§ 38–40 of the SWA. The transport allowance laid down in the Regulation (§ 2(8) and § 10) is a benefit in cash which the law does not oblige a local authority to pay and which a local authority may pay in addition to providing services mentioned in Chapter 2 of the SWA (similarly to the remaining benefits mentioned in the Regulation – summer holiday support for children, Christmas present support, etc.; see § 14(2) SWA). The regulatory provisions do not stipulate how a person's need for assistance is ascertained and how providing the service corresponding to their special need is ensured or how the amount of the fee charged for the service is determined. On that basis, the Chamber is of the opinion that § 1(2) (second sentence), § 10(1), (2), (4) and (8) of the Supplementary Social Benefits Regulation do not contravene the Social Welfare Act and the Constitution to the extent contested.

261. In the instant case, the Chamber does not assess whether Narva City Council has failed to lay down a legislative act regulating provision of the social transport service. The reason is that the Chancellor of Justice has not submitted such an application but only contested restrictions to paying the transport allowance. In her application, the Chancellor of Justice indeed contends that absence of a description of and the procedure for applying for the social transport service in Narva city is contrary to § 14(1) of the SWA, but those assertions have been made when justifying conflict with the law of the second sentence of § 1(2) of the Supplementary Social Benefits Regulation. In her proposal to Narva City Council, the Chancellor of Justice did not provide reasoning as to the absence of a description of and procedure for applying for the social transport service nor did she assert a conflict of the second sentence of § 1(2) of the Regulation with § 14(1) of the SWA on those grounds. On that basis, the application by the Chancellor of Justice cannot be understood as the Chancellor contesting failure to issue a legislative act which would regulate provision of the social transport service by laying down the description of the service and the procedure for applying for it and which would stipulate providing the service to all those to whom the law establishes provision of the service and for travel to all the destinations required by law as obligatory.

262. On the basis of the foregoing and relying on § 15(1) clause 6) of the Constitutional Review Court Procedure Act, the Chamber dismisses the application by the Chancellor of Justice seeking a declaration of unconstitutionality and repeal of § 1(2) (second sentence), § 10(1), (2), (4) and (8) of the Supplementary Social Benefits Regulation.

XI(Regulation on Services to Persons of No Fixed Abode and the Regulation on the Safe House Service for Children)

263. The safe house service is a social service organised by local authorities and regulated in §§ 33–37 of the SWA. The aim of the service is to ensure temporary housing, a safe environment and basic assistance (first

sentence of § 33(1) SWA) for a person in need, which should be provided to a child who needs assistance due to deficiencies in their care which endanger their life, health or development (§ 33(2) cl. 1) SWA), and to an adult in need of a safe environment (§ 33(2) cl. 2) SWA).

264. Narva City Council has adopted two regulations to regulate the safe house service – the Regulation on Services to Persons of No Fixed Abode regulating provision of the safe house service to adults, and the Regulation on the Safe House Service for Children. The Chancellor of Justice seeks repeal of § 2(3) clause 3) and § 6(1) and (2) of the Regulation on Services to Persons of No Fixed Abode and § 2(2) and § 3(5) of the Regulation on the Safe House Service for Children on account of their conflict with the law and the Constitution.

(A)Section 2(3) clause 3) and § 6(2) of the Regulation on Services to Persons of No Fixed Abode

265. The Chancellor of Justice contends that § 2(3) clause 3) and § 6(2) of the Regulation on Services to Persons of No Fixed Abode contravene the law (§ 3(1) clause 1), § 5(1), § 15(1) and § 33 SWA) and the Constitution (§ 3 and § 154(1)) to the extent that the service described in them does not meet the requirements under the Social Welfare Act. The Chamber understands the application so that in the opinion of the Chancellor of Justice the provisions contravene the law because they do not stipulate psychological counselling for an adult in providing the safe house service.

266. In the instant case, there is no dispute that in providing the safe house service, crisis assistance, which also includes psychological counselling, should where necessary be provided. That requirement arises from the second sentence of § 33(1) of the SWA, according which the aim of crisis assistance is to restore the person's mental balance and functional capacity in everyday life. The dispute is over whether § 2(3) clause 3) and § 6(2) of the Regulation ensure psychological counselling in providing the safe house service in Narva city,

267. The contested provisions define the substance of the safe house service in Narva city. Under these provisions, in the frame of the service a person in need of assistance is provided temporary shelter which ensures them a bed, an opportunity to wash and cook, assistance in managing their affairs, and social counselling.

268. In the opinion of the Chamber, social counselling laid down in the Regulation does not include psychological counselling. The Regulation on Services to Persons of No Fixed Abode was adopted in 2010, i.e., during the validity of the old Social Welfare Act which also stipulated social counselling as one of the social services (§ 11 old SWA). According to the law, the substance of this service did not include psychological counselling and it could be provided by social welfare workers with special training. Legislation of Narva city also does not indicate that, in the frame of the safe house service, a person in need of assistance is entitled to psychological counselling. Psychological counselling as a separate service has been established in the Safe House of Narva Social Work Centre [*Narva Sotsiaaltöökeskuse Turvakodu*] which provides the safe house service to children, but not in the Social House [*Sotsiaalmaja*] which provides the service to adults.

269. The Regulation contains no reference to indicate that the law will apply with regard to issues not regulated in it; thus, § 2(3) clause 3) and § 6(2) of the Regulation regulate the substance of the service exhaustively, while failing to ensure psychological counselling.

270. Section 2(3) clause 3) and § 6(2) of the Regulation on Services to Persons of No Fixed Abode does not ensure psychological counselling to a service recipient in providing the safe house service, and in this regard contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 33 of the SWA. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 2(3) clause 3) and § 6(2) of the Regulation on Services to Persons of No Fixed Abode, insofar as they contravene the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals them.

(B) Section 6(1) of the Regulation on Services to Persons of No Fixed Abode

271. The Chancellor of Justice contends that § 6(1) of the Regulation contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 33(1) SWA) and the Constitution (§ 3 and § 154(1)) since it links the need for assistance to absence of a residence.

272. The safe house service must be provided to an adult in need of a safe environment (§ 33(2) cl. 3) SWA). The law does not specify the circumstances that may render a person's life unsafe and cause the need for the safe house service. However, it follows from the aim of the service – to ensure a safe environment by giving a person temporary housing as well as basic assistance (first sentence of § 33(1) SWA) – that it does not constitute merely housing services (cf. the shelter service (§ 30 SWA) or the guaranteed housing service (§ 41 SWA), about this see Part IX of the judgment). The explanatory memorandum to the Draft Social Welfare Act notes that the service is intended for persons who cannot stay safely in their home, and they also cannot stay with a relative or acquaintance or in an accommodation establishment (page 36 of the explanatory memorandum).

273. Section 6(1) of the Regulation defines the range of persons entitled to the safe house service, linking the need for assistance to a person's financial impediments in using a dwelling (including lease of a municipal dwelling, which in Narva city is linked to the guaranteed housing service). The need for assistance defined in that way essentially transforms the safe house service into a housing service, excluding provision of the service to people who need a temporary dwelling and assistance for ensuring their safety.

274. In view of the forgoing, the Chamber is of the opinion that § 6(1) of the Regulation on Services to Persons of No Fixed Abode contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 33(1) of the SWA insofar as it fails to ensure provision of the safe house service to all those in need of a safe environment. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 6(1) of the Regulation on Services to Persons of No Fixed Abode, insofar as it contravenes the law, to be contrary to the § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(C) Section 2(2) of the Regulation on the Safe House Service for Children

275. The Chancellor of Justice contends that § 2(2) of the Regulation on the Safe House Service for Children contravenes the law (§ 27(5) of the Child Protection Act) and the Constitution (§ 3 and § 154(1)). The contested provision obliges a person bringing a child to a safe house to submit their data and present a personal identity document to verify personal data.

276. Processing of personal data interferes with the right to the inviolability of family and private life guaranteed under § 26 of the Constitution. A local authority may interfere with fundamental rights only on the basis of and to the extent laid down in the delegating norm provided by law. Section 33(3) of the SWA obliges a person bringing a child to a safe house to give the service provider information known to the person and necessary for providing the service. This provision does not determine the scope of the duty and the composition of data that the service provider may request.

277. The scope of the duty to provide information may differ depending on who brings the child to the safe house. In the opinion of the Chamber, it is not ruled out that the name and contact data of the person bringing a child to a safe house may be necessary for providing the service, or at least may contribute to offering a better service, including protecting the interests of the child. If a person brings a child to a safe house in the frame of performing their official duties, asking for data about their place of work is justified. In the case of information which the law allows to request, the service provider may also request presentation of evidence at the disposal of the person in order to verify the correctness of the data. However, it should be taken into account that the safe house service is intended for protecting the interests of the child, so that a local authority may not refuse to provide the service to a child on grounds that the person bringing the child to the safe house refuses to submit their data to the service provider.

278. Section 33(3) of the SWA is a general provision, application of which should also take into account rules arising from other laws. Section 27 of the Child Protection Act obliges everyone to notify the local authority or the child helpline service of a child in need of assistance (subsections (1) and (2)). The law entitles the person giving notification of a child in need of assistance not to disclose their data if this is necessary for the person's own protection or the protection of their family (second sentence of § 27(5) of the Child Protection Act). In view of the aim of the provision, a person bringing a child to a safe house should be deemed to be the person notifying the child's need of assistance within the meaning of § 27 of the Child Protection Act. That is, in performing the duty arising from § 33(3) of the SWA they may refuse to submit their data to the provider of the safe house service if this is necessary to protect the person or their family. As a rule, the restriction does not apply when a person brings a child to a safe house when performing their official duties.

279. Under the first sentence of § 2(2) of the Regulation on the Safe House Service for Children, in addition to the obligation to explain the circumstances that lead to bringing the child to the service, a person bringing a child to a safe house also has the obligation to provide their own data – name, contact data, if necessary the place of work and occupation. The Chamber finds that the provision contravenes the law insofar as it obliges a person bringing a child to a safe house to submit personal data where that person is entitled to refuse to submit their data in line with the second sentence of § 27(5) of the Child Protection Act.

280. The second sentence of § 2(2) of the Regulation on the Safe House Service for Children entitles a service provider to request that a person bringing a child to the service present their identity document to verify personal data. The Chamber finds that this provision also contravenes the law insofar as it obliges a person bringing a child to a safe house to prove the correctness of their personal data where that person is

entitled to refuse to submit data in line with the second sentence of § 27(5) of the Child Protection Act. On that basis, § 2(2) of the Regulation on the Safe House Service for Children contravenes the second sentence of § 27(5) of the Child Protection Act.

281. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 2(2) of the Regulation on the Safe House Service for Children, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

(D) Section 3(5) of the Regulation on the Safe House Service for Children

282. The Chancellor of Justice contends that § 3(5) of the Regulation on the Safe House Service for Children contravenes the law (§ 3(1) cl. 1), § 5(1), § 15(1), § 33(1) SWA) and the Constitution (§ 3 and § 154(1)) since it fails to stipulate activities contributing to a child's development in providing the safe house service.

283. In providing the safe house service, a person in need of assistance must be ensured developmental activities corresponding to their age and needs (third sentence of § 33(1) of SWA).

284. Section 3 of the Regulation on the Safe House Service for Children regulates the substance of the service, setting out in subsection (5) the activities included in providing the service, including assistance with doing school homework (clause 6)) and ensuring a visit to school (clause 7)). Thus, the Regulation covers activities contributing to a child's development only in the case of school-aged children but not younger children. Since the Regulation contains no reference that with regard to issues not regulated in it the law will apply, § 3 regulates the substance of the service exhaustively.

285. In view of the foregoing, the Chamber is of the opinion that § 3(5) of the Regulation on the Safe House Service for Children contravenes § 3(1) clause 1), § 5(1), § 15(1) and § 33(1) of the SWA insofar as it fails to ensure developmental activities corresponding to the service recipient's age and needs in providing the safe house service. Relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 3(5) of the Regulation on the Safe House Service for Children, insofar as it contravenes the law, contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

XII(Debt Counselling Service Regulation)

286. The debt counselling service is a social service organised by local authorities and regulated in §§ 44 and 45 of the SWA. Narva City Council has adopted the Debt Counselling Service Regulation, § 1(6) of which the Chancellor of Justice seeks to have repealed. In the opinion of the Chancellor of Justice, the provision contravenes § 45(1) of the SWA and § 3 and § 154(1) of the Constitution, since it regulates requirements for the service providers differently than prescribed by the law.

287. The Chamber finds that § 1(6) of the Debt Counselling Service Regulation, which stipulates that a person may provide the debt counselling service in Narva city if they have higher education in the social sphere or law or if they have completed training in debt counselling, contravenes § 45(1) of the SWA. The reason is that, in line with § 45(2) clause 2) of the SWA, a person providing the debt counselling service directly must have acquired both state-recognised higher education as well as completed in-service training of a debt counsellor, while § 1(6) of the Debt Counselling Service Regulation lays down these requirements as alternatives.

288. Based on the foregoing and relying on § 15(1) clause 2) of the Constitutional Review Court Procedure Act, the Chamber declares § 1(6) of the Debt Counselling Service Regulation contrary to § 3(1) (first sentence) and § 154 of the Constitution, and repeals it.

Villu Kõve, Viive Ligi, Nele Parrest, Peeter Roosma, Tambet Tampuu

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Links
[1] https://www.riigiteataja.ee/akt/405032016023#para1
[2] https://www.riigiteataja.ee/akt/428032013020#para4
[3] https://www.riigiteataja.ee/akt/428032013020#para5
[4] https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-3-07
[5] https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-8-09
[6] https://www.riigikohus.ee/et/lahendid?asjaNr=3-4-1-3-16

[7] https://rikos.rik.ee/?asjaNr=3-4-1-8-09
[8] https://www.riigikogu.ee/tegevus/eelnoud/eelnou/aef50e8c-3583-465d-941a-744e0631fee1/Sotsiaalhoolekande%20seadus
[9] https://www.riigikogu.ee/tegevus/eelnoud/eelnou/d3beed6e-7b7b-4e39-af91-1e2ad5ecd73c
[10] https://www.riigikohus.ee/lahendid?asjaNr=3-4-1-11-10
[11] https://www.riigikohus.ee/et/lahendid?asjaNr=3-2-1-73-04
[12] https://www.riigikohus.ee/et/lahendid?asjaNr=3-1-1-88-07
[13] https://www.riigikohus.ee/et/lahendid?asjaNr=5-18-5/17