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

EN BANC

JUDGMENT

in the name of the Republic of Estonia

Case number	5-23-38
Date of judgment	5 July 2024
Judicial panel	Chair Villu Kõve, members Velmar Brett, Hannes Kiris, Ants Kull, Kai Kullerkupp, Julia Laffranque, Saale Laos, Vahur-Peeter Liin, Heiki Loot, Kaupo Paal, Ivo Pilving, Paavo Randma, Kalev Saare, Juhan Sarv, Heili Sepp, Nele Siitam, Urmas Volens and Margit Vutt
Case	Review of the constitutionality of failure to issue acts of general application for financing the general care service
Basis for proceedings	Application of 3 October 2023 by Põlva Rural Municipal Council and Räpina Rural Municipal Council and application of 10 November 2023 by Tartu City Council
Participants and persons involved in proceedings	Representatives of Põlva Rural Municipal Council: social welfare specialist and head of department Katrin Taimre and attorney-at-law Margo Lemetti and assistant attorney-at-law Mariliis Timmermann Representatives of Räpina Rural Municipal Council: attorney-at-law Margo Lemetti and assistant attorney-at-law Mariliis Timmermann Representatives of Tartu City Council: City Secretary Jüri Mölder, Head of the Legal Service Anneli Apuhtin and Head of the Department of Social Welfare and Health Care Merle Liivak Representatives of the Riigikogu: Chair of the Social Affairs Committee Õnne Pillak and Adviser and Head of the Secretariat of the Social Affairs Committee Heidi Barot Representatives of the Government of the Republic: Minister of Social Protection Signe Riisalo and Adviser Meeli Tuubel, and representatives of the Minister of Regional Affairs Martin Kulp, Head of Legal Affairs of the Local Government Department of the Ministry of Regional Affairs and Agriculture, and Adviser Andrus Jõge Chancellor of Justice Ülle Madise and advisers to the Chancellor of Justice Vallo Olle and Kärt Muller Representative of the Minister of Justice Silja Tammeorg, Adviser to the Legal Policy Department of the Ministry of Justice

	Representatives of the Association of Estonian Cities and Municipalities: Board Member Kurmet Müürsepp and Managing Director Veikko Luhalaid
Manner of examination	16 April 2024, hearing

OPERATIVE PART

1. To deny the claim by Põlva Rural Municipal Council, Räpina Rural Municipal Council and Tartu City Council to declare unconstitutional the failure to issue acts of general application which would lay down full financing from the state budget of the obligations imposed on local authorities by § 22¹ of the Social Welfare Act.

2. To decline to examine the alternative claim by Põlva Rural Municipal Council and Räpina Rural Municipal Council to declare unconstitutional the legislature's failure to act in complying with paragraph 1 of the operative part of the Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09.

3. To deny the alternative claim by Põlva Rural Municipal Council and Räpina Rural Municipal Council to declare unconstitutional the failure to issue acts of general application which would lay down covering from the state budget of expenses related to performance of the obligations imposed by § 22¹ of the Social Welfare Act to the extent that the right of local authorities to the stability of the system of financing local government tasks is violated.

4. To deny the application for reimbursement of procedural expenses by Põlva Rural Municipal Council and Räpina Rural Municipal Council.

FACTS AND COURSE OF PROCEEDINGS

1. The Social Welfare Act (SWA), which was adopted in 2015 and entered into force on 1 January 2016, established the general care service provided outside the home (including 24-hour care) as one of the social services to be offered by local authorities (§ 20 et seq. of the SWA).

2. On 7 December 2022, the Riigikogu passed the Act amending the Social Welfare Act and the Income Tax Act ('SWA and ITA Amendment Act'), supplementing the SWA with § 22^1 "Financing of 24-hour general care service provided outside the home". This imposed the obligation on local authorities to finance the labour costs, the costs of work clothes and personal protective equipment, the costs of health examinations and vaccinations, and the costs of training and supervision of care workers and assistant care workers who directly provide care services (§ 22^1(2) SWA). A local authority may set a limit on payment of these costs which ensures availability of the service to a service recipient (§ 22^1(3) SWA). In addition, in case the income of the service recipient is lower than the average old-age pension for the second quarter of the year preceding the budgetary year published by Statistics Estonia, the local authority covers the difference between the costs paid by the service recipient and the income of the service recipient, but not more than the difference between the average old-age pension for the second quarter of the previous year and the income of the service recipient (§ 22^1(5) SWA). Providers of the general care service were required to disclose the cost of allotting a service place to a person and the actual costs of care workers and assistant care workers for one service recipient (§ 22^1(6) SWA). Section 22^1 of the SWA entered into force on 1 July 2023.

3. On 3 October 2023, Räpina Rural Municipal Council and Põlva Rural Municipal Council applied to the Supreme Court, seeking a declaration of unconstitutionality of failure to issue acts of general application which would lay down full financing from the state budget of the obligations imposed on local authorities by § 22^1 of the SWA. Alternatively, the applicants sought a declaration of unconstitutionality of the legislature's failure to act in complying with paragraph 1 of the operative part of the Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09 (alternative claim 1) and failure to issue acts of general application which would lay down covering from the state budget of expenses related to performance of the obligations imposed by § 22¹ of the SWA to the extent that the right of local authorities to the stability of the system of financing local government

tasks is violated (alternative claim 2). The application was registered in the Supreme Court as constitutional review case No 5-23-38.

4. On 10 November 2023, Tartu City Council filed an application in which it also sought a declaration of unconstitutionality of failure to issue acts of general application which would lay down full financing from the state budget of the obligations imposed on local authorities by § 22^1 of the SWA. The application was registered in the Supreme Court as constitutional review case No 5-23-39.

5. The Supreme Court Constitutional Review Chamber joined case No 5-23-39 with case No 5-23-38 into unified proceedings.

APPLICATION BY RÄPINA RURAL MUNICIPAL COUNCIL AND PÕLVA RURAL MUNICIPAL COUNCIL AND APPLICATION BY TARTU CITY COUNCIL

6. The applicants assert that the obligation imposed on local authorities to finance the 24-hour general care service in the manner laid down by § 22^1 of the SWA is a state-level obligation, so that the costs related to its performance must be covered in full from the state budget. Failure to issue an act of general application laying down financing violates the financial guarantee of local authorities, i.e. the obligation to cover the expenses related to state-level obligations from the state budget, as laid down by the second sentence of § 154(2) of the Constitution. If the Supreme Court satisfies the application, a local authority will be able to request the state to cover the shortfall in funds needed to perform the state-level task.

7. A local authority is not obliged to finance social services in full, without taking into account the financial capabilities of the person and their family. In addition to state and local government benefits, own contribution by individuals and families is stipulated, and § 16 of the SWA allows charging a fee for social services.

8. Social services and benefits are linked to fundamental rights and freedoms, including the right to receive assistance from the state in the event of deprivation, laid down by § 28(2) of the Constitution. If the benefit is not needs-based, it does not fall within the scope of protection of § 28(2) of the Constitution. A local authority is obliged to provide social services free of charge to a person to the extent that the person themselves or the family members who are obliged to support them are unable to do so due to their financial situation.

9. The obligations imposed by § 22^1 of the SWA are not needs-based benefits and their purpose is not to ensure the fundamental right laid down by § 28(2) of the Constitution, as they do not take into account a person's income. Everyone who has a need for the general care service and whose place of residence is in the relevant rural municipality or city according to the population register is entitled to this benefit. Therefore, § 22^1 of the SWA is in conflict with § 16(2) of the SWA, according to which the amount of the fee charged from a person depends, inter alia, on the financial situation of the person receiving the service and their family. Since § 22^1 of the SWA is located in the part of the Act regulating the general care service, the general provisions, including § 16 of the SWA, should extend to it. In the context of § 22^1 of the SWA, need does not mean whether a person needs the general care service, but whether they need a local authority to partially finance the cost of their service place. The applicants have ensured and will continue to ensure organisation of the general care service in accordance with § 6(1) of the Local Government Organisation Act and § 20(1) and § 16 of the SWA, regardless of the funding obligation laid down by § 22^1 of the SWA.

10. According to the explanatory memorandum to the Draft SWA and ITA Amendment Act (704 SE, XIV composition of the Riigikogu), the purpose of the amendment was to reduce people's own contribution to financing the 24-hour general care service, while increasing the share of public sector funding. In doing so, the state has made a social policy decision and assumed an additional obligation towards individuals and should also bear the related costs. Even if this were a needs-based benefit, it would not make provision of the benefit the task of the local authority.

11. The task in question did not originate from the local community. Easing people's financial burden in paying for the long-term care service was agreed upon in the cooperation agreement between the Estonian Reform Party, the Pro Patria Party and the Social Democratic Party for 2022–2023. During

the elections, the Social Democratic Party also promised a place in a care home in exchange for a pension and emphasised this in the government agreement. The draft Act that brought about the care reform was prepared by the Ministry of Social Affairs while local authorities were insufficiently involved. While the legislative drafting intent was sent for approval and consultation on 14 April 2022, the draft Act itself was sent for approval on 22 September 2022, with the deadline for response on 23 September 2022. Therefore, the Association of Estonian Cities and Municipalities declined to approve the draft Act. However, the draft Act was submitted to a sitting of the Government of the Republic on 26 September 2022, after which it was sent to the Riigikogu on 29 September 2022 and adopted on 7 December 2022.

12. The obligation laid down by § 22^1 of the SWA does not contain a sufficient margin of discretion for a local authority. The legislature has determined in detail what is to be financed and how: which cost components of the general care service must be compensated (§ 22^1(2) SWA) and to whom additional compensation must be paid (§ 22^1(5) SWA). A local authority may set cost limits (§ 22^1(3) SWA), but in doing so they must take into account the strict requirements established for provision of the service, and the service must not become inaccessible.

13. The aim of the legislature was to establish uniform service content and financing throughout the country in order to ensure equal treatment of persons. At the same time, a situation has developed where the cost of a general care service place is financed to a significantly different extent in different local authorities. § 22(1) of the SWA does not oblige a person to use a general care service provider located in the local authority of their residence, nor does a local authority have to ensure availability of the service within its boundaries or in its immediate vicinity. This means that the cost threshold can be set based on service providers located all over Estonia, thereby justifying establishment of a lower cost limit. It is unjustified to treat persons unequally on the basis of different cost limits, which in turn are determined by the economic capacity of a particular local authority. This may lead to a situation where people start creating incorrect residence data in the population register in order to receive a higher benefit. At the same time, it is very difficult for local authorities to find out whether a person actually lives at the registered address. Even when paying subsistence benefits as a state-level task, it is difficult to ensure equal treatment of persons nationwide. A local authority might be better placed than the state to find out whether a person needs the general care service, but the state can better ensure that the cost of a service place is reimbursed to everyone on an equal basis. As the shaper of economic and tax policy, the state enjoys significantly greater freedom of decision-making.

14. The Constitution requires that the costs of a state-level obligation must be covered from the state budget. At the same time, under § 156(3^7) of the SWA, support is prescribed for local authorities in the state budget based on the capacity of the state budget for provision of services to adults in need of long-term care. Support is distributed among local authorities in proportion to the number of residents aged 65–84 and at least 85 years of age. This provision is in force from 1 January 2023 to 31 December 2024. Although, under § 156(3^8) of the SWA, a local authority may also use this support for other social services which help to reduce the need for personal assistance of persons in need of long-term care or the care burden of their family members, there is actually no surplus, but rather a shortfall, of money allocated from the state budget.

15. In their supplementary opinion, Põlva Rural Municipal Council and Räpina Rural Municipal Council found that the discretion left to a local authority for ascertaining the need for assistance or provision of other social services should not be taken into account in assessing the obligation in question. Even in the case of a task falling within the shared competence of the state and local authorities, the state-level obligation may consist of an additional obligation provided by law to cover only certain types of costs. In determining state-level obligations, the Supreme Court has not proceeded from the public task as a whole, but in the case of each specific statutory obligation has assessed whether it is a local government task or a state-level obligation. The 2023 State Budget Act does not clearly indicate which amounts have been allocated for performance of state-level obligations and which for performance of local government tasks. The obligation to reimburse the minimum amount of costs related to a service cannot be a service standard. As a person can also use the service

outside the local authority of their residence, the principle of subsidiarity does not have the same meaning in the case of this service as in the case of social services provided at the person's place of residence. The local authority's discretion in compensating the costs has been reduced to zero if no places are available in a care home within the price limit and the local authority must also compensate costs exceeding the limit in order to ensure availability of the care service. In its supplementary opinion, Tartu City Council agreed with the explanations and justifications described above.

Application by Räpina Rural Municipal Council and Põlva Rural Municipal Council

16. From their budgetary resources before the entry into force of § 22[1] of the SWA, the applicants ensured and will continue to ensure that the costs of the general care service are covered for those in need, i.e. persons whose income and assets do not enable them to pay for the general care service themselves and who have no family or whose family is unable to pay for the person's general care service or is unable to pay for it in full. Between 1 January 2022 and 31 December 2022, 121 residents of Räpina rural municipality stayed in various social welfare institutions, in the case of 59 of whom Räpina rural municipality participated in paying for the service, at a total cost of 167 209 euros. At the beginning of 2023, 187 residents of Põlva rural municipality were staying in social welfare institutions, and in the case of 59 of them, Põlva rural municipality participated in paying for the service, at a total cost of 232 016 euros in 2022.

17. The obligation laid down by § 22[1] of the SWA to finance the cost of a service place for the general care service of persons is an additional obligation for local authorities in addition to the obligation to organise the service. This is also confirmed by the explanatory memorandum to the draft SWA and ITA Amendment Act. As the benefit laid down by § 22[1] of the SWA is not needs-based, it is similar to family benefits, which are also benefits paid from the state budget. The applicants also pay benefits to residents of their municipality without taking into account a person's income but, in that case, the procedure for paying benefits has been established on the basis of § 22(1)5) of the Local Government Organisation Act, not on the basis of the SWA. Payment of benefits regardless of a family's income is a local task assumed by the local authority itself. Under § 14 of the Constitution, the obligation to guarantee this fundamental right also lies with local authorities. According to the first sentence of Article 4(3) of the European Charter of Local Self-Government, public responsibilities are generally to be exercised by those authorities which are closest to the citizen. The fact that a benefit is assistance intended for persons in need which should be ensured by a local authority as the authority closest to the person does not preclude that this may be a state-level task within the meaning of the second sentence of § 154(2) of the Constitution.

18. Although § 22[1] of the SWA does not prescribe how the portion of the cost of the general care service place to be borne by the local authority should be reimbursed to the person, i.e. whether to grant it as social assistance by an administrative act or to conclude a tripartite administrative contract with the person and the service provider (§ 21(1) SWA), the discretion left to the local authority is not sufficient for § 22[1] of the SWA to be regarded as a local task.

19. By Order No 81 of 6 March 2023 of the Government of the Republic, Räpina rural municipality was allocated 237 093 euros for 2023 as a grant for organising long-term care. The actual need is 376 062.18 euros. Thus, in the second half of 2023 alone, Räpina rural municipality will have to find at least 138 969.18 euros from its own budgetary resources. Assuming that the prices of general care service providers do not change, the cost to Räpina rural municipality in 2024 for performing the obligations imposed by § 22[1] of the SWA will be at least 752 124.36 euros. It is not currently known how much of this will be covered by state funding. However, considering that, for example, total expenditure of the Räpina municipality budget for 2023 is 9.96 million euros, such an amount represents 7.6% of total budget expenditure.

20. By order of the Government of the Republic, Põlva rural municipality was allocated 460 619 euros for 2023 as support for organising long-term care. By order No 2-3/272 of 13 June 2023 of Põlva Rural Municipality Government, starting from 1 July 2023, a maximum limit of 480 euros a month was established for the costs of care workers and assistant care workers directly providing the 24-hour general care service financed from the budget of Põlva rural municipality, on the assumption that the

number of general care service recipients in Põlva rural municipality is 176 and, based on the number of service recipients, the cost of fulfilling the obligations imposed by § 22¹ of the Social Welfare Act in the second half of 2023 is 506 820 euros. The cost does not include the costs of preparing the care reform in the amount of 15 300 euros. By the time of submission of the application, the number of general care service recipients has increased to 185 and the expected shortfall for performing the obligations imposed by § 22¹ of the SWA has risen to 72 200 euros. The cost to Põlva rural municipality in 2024 for fulfilling the obligations imposed by § 22¹ of the SWA will be at least 1 065 638 euros. Considering that the budget for the operating expenses of Põlva rural municipality in 2023 is 26.2 million euros, this amount represents 4% of the total expenses of the operating budget.

21. In its 2017 audit report "Financing of local authorities", the National Audit Office found that only 17% of local government revenues are such that a local authority can influence their amount to some extent, while the remaining 83% of revenue is decided by the state. This makes it very difficult to find additional funds and these expenses have to be incurred at the expense of funds required for fulfilling other current tasks, which in turn may lead to a situation where the level of other public services falls below the necessary minimum level due to lack of funds. Under § 156(37) of the SWA, the costs related to fulfilling the obligations imposed by § 22¹ of the SWA are only partially covered from the state budget, and this provision is temporary, which is why it is not sufficient to ensure fulfilment of the obligation arising from the second sentence of § 154(2) of the Constitution.

22. If the Supreme Court finds that the obligations imposed by § 22¹ of the SWA are not a state-level obligation but a mandatory local government task, the legislature has violated the applicants' right to stability of the system of financing local government tasks (§ 154(1) of the Constitution in conjunction with the principle of legitimate expectations). The legislature did not give local authorities sufficient time to reorganise their activities.

23. Section 154(1) of the Constitution guarantees the right of local authorities to have the overall level of funding for local government tasks correspond to the volume of tasks assigned to local authorities. The state must create regulatory arrangements which ensure that local authorities have funds for performing local tasks at least to the extent that would enable performance of the minimum necessary local tasks to the minimum necessary extent. To date, the legislature has not established a legal system for financing local authorities that meets the conditions required by paragraph 1 of the operative part of the Supreme Court *en banc* judgment of 16 March 2010 in case No 3-4-1-8-09. Therefore, the applicants are unable to prove that funding local government tasks falls below the minimum necessary level in these municipalities after addition of the obligations laid down by § 22¹ of the SWA. Consequently, since financing local tasks must be considered as a whole, it is not sufficient merely to show that the additional resources provided by the state are insufficient to cover the actual costs. Due to the legislature's inaction, local authorities are unable to defend their right to sufficient funds in court.

24. If, however, in order to adjudicate the alternative application, it is necessary to prove the applicants' claim that their right to sufficient financial resources for performing local government tasks has been violated, the applicants request that the Supreme Court place the burden of proof either partially or entirely on the state. It is the legislature's duty to stipulate by means of acts of general application which obligations imposed on local authorities by law are local government obligations and which are state-level obligations. Therefore, in order to prove the applicants' claim that their right to sufficient financial resources for performing local government tasks has been violated, it is first necessary to determine all state-level tasks and the money spent on them. Only then can the sufficiency of funds allocated for local government tasks be assessed. As it is not within the applicants' competence to determine which tasks are state-level tasks and what proportion of a local authority's budgetary expenditure constitutes costs of performing state-level tasks, the applicants are also unable to prove that their rights have been violated.

25. Local authorities must be able to act in the reasonable expectation that the regulatory arrangements established for financing their tasks will remain stable and will not unexpectedly be made less favourable to local authorities, especially in the middle of the budgetary year. The Riigikogu adopted

the SWA and ITA Amendment Act on 7 December 2022 and § 22[1] of the SWA entered into force on 1 July 2023. At the same time, in order to find out how many people they will have to start reimbursing for the cost of a general care service place from 1 July 2023, local authorities had to assess the need for assistance of all current general care service recipients, as well as the need for assistance of all those who have recently expressed a wish to start using the general care service. Thus, when preparing and adopting the 2023 budget, local authorities were unable to take into account the costs associated with the obligation imposed under § 22[1] of the SWA, as the amount of these costs was not known at the time of adoption of the rural municipality budget.

26. According to § 4(1) of the Local Government Financial Management Act, the budgetary year of a local authority begins on 1 January and ends on 31 December. Adoption of the budget cannot be delayed for long after the beginning of the new budgetary year, because in such a case, § 24 of the Local Government Financial Management Act sets strict restrictions on incurring expenditure. In addition, under § 52(1) clause 1 of the Local Government Organisation Act, a municipal council is incapacitated if it fails to pass the rural municipality or city budget within three months as of the beginning of the budgetary year. Räpina Rural Municipal Council adopted the 2023 budget of Räpina Rural Municipality on 25 January 2023, and Põlva Rural Municipal Council adopted the 2023 budget of Põlva Rural Municipality on 26 January 2023. For example, in the case of Räpina rural municipality, expenses related to the obligations imposed by § 22[1] of the SWA amount to 376 062.18 euros in the second half of the year, which represents some 3.7% of the total expenditure of the 2023 budget of Räpina rural municipality. Subsection 156(3[7]) of the SWA, under which support is allocated for local authorities in the state budget based on the capacity of the state budget for provision of services to adults in need of long-term care, entered into force on 1 January 2023, but the amount of state support was not known as of 1 January 2023, or at the time of adoption of the applicants' budgets. The amount of support granted by the state was determined by Government of the Republic Order No. 81 of 6 March 2023, which affirmed distribution of resources for the equalisation and support fund of the 2023 State Budget Act.

27. Article 9(6) of the European Charter of Local Self-Government requires that local authorities must be consulted on the way in which redistributed funds are to be allocated to them. When establishing obligations under § 22[1] of the SWA, the legislature did not give local authorities sufficient time to adapt to the new regulation (*vacatio legis*). The purpose of the rapid entry into force of the amendments may have been the wish to ensure that persons have the right to receive the benefit laid down by § 22[1] of the SWA as soon as possible. Thus, the interference may have had a purpose compatible with the Constitution, but the interference was disproportionate to the rights of local authorities and violated the right to stability in the system of financing local government tasks arising from § 154(1) of the Constitution. The applicants are of the opinion that the state should fully compensate local authorities for at least all the costs associated with the obligations imposed by § 22[1] of the SWA in 2023.

28. The applicants request that the legal expenses associated with the preparation and review of the application be awarded to the Association of Põlva County Municipalities in accordance with the list of procedural costs to be submitted hereafter.

29. The supplementary opinion notes that the state has still not complied with the 2010 Supreme Court *en banc* judgment and has not established a system for financing local authorities that would allow assessing the adequacy of funding for local government tasks on a case-by-case basis. As a result, the applicants are unable to prove that the funding system does not allow them to perform local government tasks to at least the minimum required extent.

Application by Tartu City Council

30. Prior to the care reform, the city of Tartu referred to the general care service persons who themselves or whose maintenance providers did not have sufficient funds to pay for the service, and in some cases persons whose guardian was the city of Tartu. The remaining persons applied for the service themselves or with the help of family members; if necessary, the city helped them find a place in a care home, but the city did not keep track of them. Persons who ran out of money to pay for the

service and whose maintenance providers were unable to provide maintenance were later referred by the city to the general care service and the city undertook to pay the shortfall. After the reform, the number of people referred to the general care service by local authorities has increased drastically.

31. The discretion granted to a local authority to set the cost limit under § 22^1(3) of the SWA is contradictory, as it may result in the necessary general care service still remaining inaccessible to the person. However, in the case of § 22^1(5) of the SWA, local authorities have no discretion whatsoever (e.g. the actual financial situation of the person – real estate, funds in a bank account, etc. – cannot be taken into account when compensating for the difference). The city of Tartu has set the limit at 760 euros. In doing so, the costs of Tartu Care Home as an institution administered by Tartu City Government were taken into account. Tartu Care Home differs from most other general care service providers in that, even before 1 July 2023, Tartu Care Home had already fulfilled all the requirements for staff numbers set out in the Minister of Social Protection Regulation No 36 of 19 June 2023 on the "Requirements for the 24-hour general care service provided outside the home". Tartu Care Home also has capacity to offer a place for various more challenging clients who do not need hospital treatment but whose health condition requires greater care or, for example, staying alone in a room to prevent the spread of infection. For the city of Tartu, Tartu Care Home also functions as a "general care service emergency facility", where the city of Tartu can quickly place a person in need of assistance if other service providers refuse.

32. For years, funding the general care service remained at the same level in Tartu city, increasing in proportion to the general budget increase. In Tartu's 2022 budget, a total of 2 119 357 euros was spent on the general care service. In Tartu's 2021 budget, a total of 1 969 082 euros was spent on the general care service, i.e. in 2022, the corresponding expenditure increased by 150 275 euros (7.63%).

33. The effects of the care reform were taken into account in preparation of the 2023 budget, and the city planned to allocate funds in the amount of 2 629 291 euros for provision of the general care service. If the care reform as such had not taken place, the total amount of funds required for provision of the general care service in the city's 2023 budget would have remained at the 2022 level or would have been changed, taking into account the city's budgetary capacity, at best in proportion to the increase in operating income (compared to 2022, 8.6%). Calculated in this way (without the care reform), the total amount of funds needed for provision of the general care service in Tartu's 2023 budget would have been a maximum of 2 301 622 euros. In 2023, the city of Tartu received 2 790 756 euros of state funds as support for organising long-term care (for the period from July to December 2023) (Government of the Republic Order No 81 of 6 March 2023 "Distribution of the equalisation and support fund in 2023"). Tartu's 2023 budget included city funds (2 629 291 euros) and state support (2 790 756) for provision of the general care service, which would have enabled covering all the necessary expenses related to the care reform in 2023.

34. When planning the care reform, the state has taken into account that the local authorities' own contribution to financing the care reform is 20%. Thus, the financial contribution of the city of Tartu to organisation of the general care service was proportionally significantly higher than the average of local authorities in Estonia. Starting from 2024, local authorities will be given additional funds to finance the care reform through income tax and the equalisation fund. In its budget forecast, the state has taken into account that the current own contribution of local authorities will increase only in line with general economic growth and continued increase in the number of service recipients, and that additional costs will be covered by state budget funds. In 2024, the city will have to cover a significantly larger portion of the costs related to the care reform from its own budget, because state budget support will not cover the obligations specified in § 22^1 of the SWA.

35. The 2024 Tartu city budget includes 7 901 235 euros for provision of the general care service (the cost of supporting simultaneous service of 880 people). According to the latest forecasts and information, 3 781 555 euros of state budget funds have been planned for Tartu (including 3 345 000 euros from income tax and 436 555 euros from the equalisation fund). Considering the usual volume of funding for the general care service in the city of Tartu, it is evident that the planned state budget funds are not sufficient to cover the costs associated with the care reform, and the state expects the

city of Tartu to significantly increase coverage of costs related to the care reform from the Tartu city budget (at least 4 119 680 euros). However, finding additional funds from the Tartu city budget is extremely difficult and this expenditure will have to be at the expense of funds currently used for performing other tasks of the city of Tartu, which in turn may lead to a situation where the level of other public services falls below the necessary minimum level due to lack of funds.

36. If the care reform had not taken place in this form and the amount of funds planned for provision of the general care service in the 2023 Tartu city budget would therefore have been a maximum of 2 301 622 euros (an increase of 8.6% compared to 2022), then the maximum amount of funds planned in the 2024 budget for provision of the general care service would have been 2 504 165 euros (at the same rate as the growth in operating income (operating income will increase by 8.8% in 2024 compared to 2023).

37. Two alternative methods are available for calculating the extent of insufficiency of state budget funds related to the care reform in 2024.

(1) Based on the extent to which Tartu city has financed the general care service so far.

In this case, a shortfall of 1 615 515 euros occurs in state budget funds for care reform. Calculation: 7 901 235 – 2 504 165 (Tartu city's usual own contribution) – 3 781 555 (known state budget allocation to Tartu city in 2024) = 1 615 515;

(2) Based on the state's own assumption that a local authority's own contribution to financing the care reform is 20%.

In this case, the shortfall is 2 539 433 euros in state budget funds. Calculation: 7 901 235 – 1 580 247 (20% Tartu city's own contribution) – 3 781 555 (known state budget allocation to Tartu city in 2024) = 2 539 433.

38. Neither calculation takes into account the possibility that the number of persons using the service at the same time might actually be higher than predicted (current calculations are based on the potential costs associated with 880 people using the service simultaneously). Although the state has assumed that the number of service recipients will not grow faster than 1% a year, Tartu's experience shows a significantly more rapid increase in the number of service recipients. As of 1 December 2022 (i.e. before the care reform was approved), 734 Tartu residents were receiving the general care service, as of 1 July 2023 (when the care reform came into force), 807 Tartu residents were receiving the general care service, as of 1 November 2023 (the date of applying to the Supreme Court), 834 Tartu residents were receiving the general care service, and considering that as of 1 November 2023, Tartu city had referred 948 persons to the general care service, then in addition to the 834 persons already using the service, another 114 Tartu residents are about to start using the service (all persons referred to the service by Tartu city generally already have a specific service place with a general care service provider). Thus, the number of Tartu residents receiving the general care service (734 versus 948) has increased by 29.16% compared to 1 December 2022.

39. Nor do the cost estimates take into account the possibility that the cost of service places will increase further. The increase in the cost of service places and, in particular, the cost component financed by local authorities in the coming years is due, among other things, to the "Requirements for the 24-hour general care service provided outside the home", established by Minister of Social Protection Regulation No 36 of 19 June 2023. By 1 July 2026 at the latest, it must be ensured that a place of service provision has at least one care worker for up to 36 service recipients around the clock and at least one additional care worker or assistant care worker for up to 12 service recipients during the day for 12 consecutive hours. At the time of application, only a few service providers meet the requirements for staffing numbers.

40. On 1 January 2024, legislative amendments will enter into force which will increase the income tax allocated to local authorities from the state pension of resident natural persons from 1.88% to 2.5% in 2024 and, at the same time, reduce the income tax allocated from other taxable income from 12.06% to 11.89%. This amendment will increase the income tax receipts of less profitable local authorities and reduce the income tax receipts of more profitable local authorities by the same amount, which means a decrease in the expected annual growth of income tax receipts. The city of Tartu is one of

the local authorities that will be negatively affected by these changes. Initial estimates suggested that, as a result, Tartu would receive 0.52 million euros less in income tax in 2024, whereas based on the latest forecasts, Tartu could lose more than 0.8 million euros as a result (an increase in the income tax allocated to local authorities from 1.88% to 2.5% means additional income tax receipts of 1 103 104 euros, while a reduction in the income tax allocated from other taxable income from 12.06% to 11.89%, in turn, means less income tax receipts by 1 911 849 euros, i.e. 1 103 104 + (-1 911 849) = -808 745). All of this will inevitably have a negative impact on the city's ability to find additional funds in its budget to cover the costs of the care reform.

OPINIONS OF THE PARTICIPANTS IN THE PROCEEDINGS AND PERSONS INVOLVED IN THE PROCEEDINGS

[…]

EXAMINATION OF THE CASE IN THE SUPREME COURT

75. By order of 9 June 2020 (5-23-38/27), after having examined the case and in view of the large-scale social significance and potential long-term effects of the issue in dispute, the five-member panel of the Supreme Court Constitutional Review Chamber referred the case for adjudication to the Supreme Court *en banc*.

76. The participants in the proceedings replied to the Supreme Court's written questions for clarification. At the hearing of the Supreme Court *en banc*, the participants in the proceedings and other institutions and persons that had submitted their opinions maintained their previous main positions, clarifying them and answering the questions raised by the judicial panel.

CONTESTED PROVISION

77. Section 22^1 subsections (1), (2) and (5) of the Social Welfare Act:

"(1) Where a local authority has determined that a person needs the 24-hour general care service provided outside the home, the cost of the service place is financed from the budget of the local authority of the residence of the service recipient entered in the population register and from a fee charged from the person.

(2) In the case provided in subsection 1 of this section, a local authority finances the following expenses of care workers and assistant care workers directly providing the care service specified in § 22(3) of this Act:

1) labour costs;

2) the costs of special work clothes and personal protective equipment;

3) the costs of health examination and vaccination;

4) training and supervision costs.

[…]

(5) If the income of a service recipient is lower than the average old-age pension for the second quarter of the year preceding the budgetary year published by Statistics Estonia, the local authority covers the difference between the costs paid by the service recipient and the income of the service recipient, but not more than the difference between the average old-age pension for the second quarter of the previous year and the income of the service recipient. Income is deemed to include the recipient's state pension, funded pension within the meaning of the Funded Pensions Act, work ability allowance within the meaning of the Work Ability Allowance Act and income subject to social tax within the meaning of the Social Tax Act."

OPINION OF THE COURT *EN BANC*

78. The Court *en banc* will first deal with the admissibility of the first claim submitted in the application of Räpina Rural Municipal Council and Põlva Rural Municipal Council, and the claim (principal claim) submitted in the application of Tartu City Council (I), and adjudicate that claim (II).

Next, the Court *en banc* will analyse the alternative claim 1 (III) and alternative claim 2 (IV) of Räpina Rural Municipal Council and Põlva Rural Municipal Council. Finally, the Court *en banc* will resolve the issue of reimbursement of procedural expenses (V).

I

79. Tartu City Council, and Räpina Rural Municipal Council and Põlva Rural Municipal Council seek from the Supreme Court a declaration of the unconstitutionality of failure to issue acts of general application which would lay down full financing from the state budget of the obligations imposed on local authorities by § 22^1 of the SWA. In the applicants' opinion, the legislature has violated the right of local authorities under the second sentence of § 154(2) of the Constitution to full financing from the state budget of state-level statutory obligations imposed on them (Supreme Court *en banc* judgment 3-4-1-8-09, paras 60 and 74). This is a local authority constitutional guarantee stipulated by § 154(2) of the Constitution.

80. Räpina and Põlva rural municipalities and Tartu city filed applications with the Supreme Court under the procedure laid down by § 7 of the Constitutional Review Court Procedure Act (CRCPA), which enables them to have recourse directly to the Supreme Court to protect local authority constitutional guarantees. An application submitted on the basis of § 7 of the CRCPA is admissible if two conditions are simultaneously met: 1) the application has been submitted by the municipal council by a majority of the votes of its members and 2) the application alleges that an act of general application or a provision thereof contravenes local authority constitutional guarantees (Supreme Court Constitutional Review Chamber judgment 3-4-1-3-16, paras 76 and 81; 5-22-5/16, para. 36). The Supreme Court has also recognised the right of a local authority to contest an omission violating the constitutional guarantees of a local authority, i.e. failure to issue an act of general application (Supreme Court *en banc* judgment 3-4-1-8-09, paras 93–94; Supreme Court Constitutional Review Chamber judgment 5-17-8/8, para. 52).

81. The conditions for admissibility of the main claim have been met. On 20 September 2023, Räpina Rural Municipal Council adopted a resolution with a majority vote of its members, approving the text of the application by Räpina Rural Municipal Council and Põlva Rural Municipal Council. On 28 September 2023, Põlva Rural Municipal Council adopted a resolution with the same content by a majority vote of its members. On 9 November 2023, Tartu City Council adopted a resolution by a majority vote of its members, approving the text of the application by Tartu City Council. In their main claim, the applicants allege a violation of the local authority constitutional guarantees, i.e. § 154(2) of the Constitution (see paragraphs 79 and 80 of this judgment).

II

82. The applicants do not dispute the obligation of local authorities to organise the 24-hour general care service provided outside the home, as laid down by §§ 20–22^1 of the SWA. The applicants assert that, under the Constitution, financing this service on the basis of § 22^1(1), (2) and (5) of the SWA is a state-level and not a local authority obligation. Enactment of § 22^1 of the SWA changed the conditions for the 24-hour general care service provided outside the home and reduced the contribution of a service recipient and their family members to paying for the service, thereby increasing the financial expenditure of local authorities in relation to this service. Unlike the applicants, the other participants in the proceedings are of the opinion that the obligation in question is a local government task made mandatory by law. Thus, in adjudicating the applicants' main claim, it is necessary to assess whether § 22^1 of the SWA establishes a state-level or a local authority obligation within the meaning of § 154 of the Constitution.

83. The right of self-organisation of local authorities is guaranteed by § 154(1) of the Constitution. According to this provision, all local issues are decided and organised by local authorities, acting independently on the basis of laws. Local issues, i.e. local government tasks, are divided into tasks made mandatory by law and voluntary tasks whose fulfilment is not prescribed by law (Supreme Court *en banc* judgment 3-4-1-8-09, para. 53). Based on the substantive criterion, local issues are those that arise from and affect the local community and are not included within the competence of a state body

according to the formal criterion or assigned to it by the Constitution (Supreme Court *en banc* judgment 3-4-1-8-09, para. 53). State-level tasks, on the other hand, have a nationwide character.

84. With regard to local government tasks, a local authority has the right to sufficient financial resources for performing local government tasks (§ 154(1) Constitution). However, in the case of a state-level obligation imposed on a local authority by law, the local authority is entitled to its full funding from the state budget (second sentence of § 154(2) of the Constitution). (See Supreme Court *en banc* judgment 3-4-1-8-09, paras 54, 55, 60 and 74.)

85. According to the Constitution, a task may fall within the competence of both the state and a local authority at the same time. In delimiting local government and state-level tasks, the legislature enjoys freedom of decision within the limits granted by the Constitution (Supreme Court *en banc* judgment 3-4-1-8-09, para. 73).

86. In the case of so-called shared competence, the Supreme Court, based on the principle of subsidiarity set out in the European Charter of Local Self-Government, has found that the task should be performed by the level of government that can best cope with it in a particular situation (Supreme Court *en banc* judgment 3-3-1-41-06, para. 26; see also Supreme Court Constitutional Review Chamber judgment 3-4-1-9-06, para. 29). Article 4(3) of the Charter states: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy."

87. Section 22^1(1), (2) and (5) of the SWA, referred to in the applications, concern social welfare in general and, specifically, the 24-hour general care service provided to people outside the home.

88. In the Constitution, social welfare is divided between the state and local authorities. Under § 28(1) of the Constitution, everyone has the right to protection of health. Estonian citizens have the right to assistance from the state in the case of old age, incapacity for work, loss of a provider or deprivation. The categories and extent of assistance, and the conditions and procedure for receipt of assistance are to be provided by a law (sentences 1 and 2 of § 28(2) of the Constitution). The state shall promote voluntary and municipal welfare services (§ 28(3) Constitution). Families with many children and persons with disabilities shall be under the special care of the state and municipalities (§ 28(4) Constitution). It can be concluded from the provisions referred to that, within the meaning of the Constitution, welfare is the task of both the state and local authorities (see also Supreme Court *en banc* judgment 3-4-1-8-09, para. 67; Supreme Court Constitutional Review Chamber judgment 5-18-7/8, para. 121).

89. Under the Social Welfare Act, the legislature divided social welfare obligations between local authorities and the state and, in Chapter 2 of the SWA, specified those social services that can be regarded as tasks of local authorities (see also Supreme Court Constitutional Review Chamber judgment 5-18-7/8, para. 122). Under § 6(1) of the Local Government Organisation Act, a local authority is obliged to organise provision of social services within its boundaries. Similarly, § 5(1) of the SWA obliges the local authority of a person's residence to organise provision of social services, social benefits, emergency social assistance and other assistance. As a person's needs must be the primary consideration in providing social welfare assistance (§ 3(1) clause 1 SWA), a local authority must ascertain the need for assistance by the person requesting assistance and determine the corresponding assistance (§ 15(1) SWA).

90. One type of social service is 24-hour general care provided outside the home (§§ 20–22^1 SWA). Provision of the service to a person entitled to it (i.e. a person in need of assistance) must be organised by the local authority of the person's place of residence registered in the population register (§ 5(1) SWA). This involves the local authority helping *its own* residents by ensuring that they receive 24-hour assistance in a care institution in case of need. The general care service is intended for adults who, due to their state of health, functional capacity or living environment, are unable to cope at home without outside assistance (§ 20(1) SWA). It is a complex service aimed at realising several fundamental social rights of a person in need of assistance as laid down by § 28 of the Constitution

and provision of which presupposes ascertaining the person's situation and needs in each individual case. Even before the care reform, local authorities organised the service in question, which protects the fundamental rights of the local authority's own people. Local authorities are closest to their residents in need of assistance, and no circumstances have been presented in the proceedings that would lead to the conclusion that the state could perform this task better than local authorities. Thus, the legislature has not arbitrarily assigned the task in question to local authorities.

91. The purpose of § 22^1(1), (2) and (5) of the SWA was to reduce people's own contribution to paying for the service. As a result, the availability of long-term care for those in need should improve (704 SE, explanatory memorandum, page 19). In addition, the contested norms ensure that a person in need of assistance for physical or mental reasons does not fall into deprivation when paying for the service (see ibid., pages 3 and 7). The scope of protection of fundamental rights laid down by § 28 of the Constitution is not limited in the Constitution by the condition that the person themselves or their next of kin are unable to pay for assistance for economic reasons. The conditions for receiving assistance are provided by law (second sentence of § 28(2) of the Constitution). When setting the conditions, the legislature may take into account the obligation to assist the family as laid down by § 27(5) of the Constitution (see also Supreme Court Constitutional Review Chamber judgment 5-20-1/15, para. 22 and the case-law cited therein, as well as Supreme Court *en banc* judgment 5-20-3/43, para. 42). The Riigikogu enjoys a broad margin of discretion regarding the issue of how and to what extent the financial situation of a person and their next of kin should be made a condition for receiving assistance under § 28 of the Constitution (see also Supreme Court *en banc* judgment 5-20-3/43, paras 41–44).

92. Thus, in establishing § 22^1(1), (2) and (5) of the SWA, the legislature was guided by the objective of protecting fundamental rights. At the same time, by enshrining the funding obligation in the law, it laid down the conditions for eligible persons to receive assistance (second sentence of § 28(2) of the Constitution). Therefore, it cannot be ruled out that a person who is able to pay for the service themselves or whose next of kin are able to pay for it may also claim the service on the basis of § 28 of the Constitution. The good financial standing of a person or their next of kin does not mean that the service in question cannot be aimed at realising the fundamental rights of the person in need of assistance, although such situations do not necessarily fall within the core of the rights set out in § 28 of the Constitution (cf. Supreme Court Constitutional Review Chamber judgment 5-18-7/8, para. 145). The core of § 28 of the Constitution includes the right of every person in need of care to accessibility of assistance guaranteeing dignity and the minimum necessary quality of such assistance. Guaranteeing fundamental rights is not only the responsibility of the state, but also of local authorities (§ 14 Constitution).

93. At the same time, the explanatory memorandum to the Draft Act amending the Social Welfare Act nevertheless points out that most people in need of the service are unable to pay for the service (e.g. when comparing pensions and care home fees) (704 SE, page 13). That assessment has not been refuted in the case.

94. Section 22^1(1), (2) and (5) of the SWA did not change the content, nature or purpose of the 24-hour general care service provided outside the home. These provisions merely divided the obligation to finance this service between the person in need of assistance and the local authority. Before the welfare system was changed, a local authority could charge a fee for provision of a social service, establishing the amount of fee and the conditions for charging it (§ 16(1) SWA). After the reform, a local authority has the obligation to finance the cost of the 24-hour general care service provided outside the home to a person in need of assistance living within its boundaries to the extent that it includes the costs of care workers and assistant care workers (i.e. the costs of labour, work clothes and personal protective equipment, health examinations and vaccinations, as well as training and supervision) (§ 22^1(1) and (2) SWA). At the same time, a local authority may establish a limit on paying the expenses of care workers and assistant care workers, which must ensure accessibility of the service to a person in need of assistance (§ 22^1(3) SWA). The obligation arising from the latter provision corresponds to the subjective right of the person in need of assistance to make a claim

against the local authority. On the other hand, the person in need of assistance is obliged to pay the cost of accommodation and meals and other expenses related to provision of the service out of the cost of the service place (§ 22^1(1) and (4) SWA). If the income of the service recipient is lower than the average old-age pension for the second quarter of the year preceding the budgetary year published by Statistics Estonia, the local authority covers the difference between the costs paid by the service recipient and the income of the service recipient, but not more than the difference between the average old-age pension for the second quarter of the previous year and the income of the service recipient (§ 22^1(5) SWA). Who has to pay for the service in question and how much does not make the obligation to organise the service a state-level obligation.

95. The applicants' position that the obligation to finance the service laid down by § 22^1(1), (2) and (5) of the SWA should be regarded as a separate obligation is incorrect. The obligation to bear the costs forms a coherent whole together with the service organised by a local authority. Whether and how much must be paid for the service is only one part of the conditions for receiving the service.

96. The present dispute differs from the judgments of the Supreme Court in cases No 3-4-1-26-14 and 5-17-8. The first case concerned a situation where a local authority had a statutory obligation to cover the operating costs in respect of a pupil at a private general education school if the pupil decided to acquire general education at a private general education school, not at a municipal school. Under § 37(2) of the Constitution, a local authority is not obliged to ensure the availability of basic education through private schools (Supreme Court Constitutional Review Chamber judgment 3-4-1-26-14, paras 55 and 56). Case No 5-17-8 concerned a situation where a local authority had a statutory obligation to cover the operating expenses in respect of a pupil at a municipal school of another local authority if the pupil decided to study at a municipal school of another local authority. The first sentence of § 37(2) of the Constitution does not oblige a local authority to contribute to compensating the tuition costs of a pupil, registered as a resident of that local authority according to the population register, in every case where a pupil has enrolled for a vacant place in another local authority's municipal school by agreement between the pupil's parent or guardian and the other local authority (Supreme Court Constitutional Review Chamber judgment 5-17-8/8, para. 64). At the same time, the local authority lacked any discretion to decide whether to refer the pupil to a municipal or private general education school, or to its own school or the school of another local authority. In the case of the general care service, the local authority decides whether to organise provision of assistance in the rural municipality or city's own care home or in a private sector care home or to provide assistance in cooperation with other local authorities (§ 62 et seq. Local Government Organisation Act; § 12(7) Public Procurement Act). As a local authority decides itself in which social welfare institution the general care service is to be ensured for a person, financing the costs of the care service is closely linked to the local authority's task to organise provision of the general care service. Therefore, unlike the regulatory scheme for bearing the operating costs of general education schools described above, the financing obligation laid down by § 22^1 of the SWA cannot be regarded as an independent (state-level) obligation imposed on local authorities.

97. The obligation in question does not become a state-level obligation by the fact that, with the care reform, the legislature also wished to protect the rights of family members of service recipients in need of assistance by reducing their statutory maintenance obligation (explanatory memorandum to 704 SE, pages 1, 3 and 13). This objective was secondary. Nor is it decisive that the family members concerned and those in need of assistance may not live in the same local authority. Many local government tasks also have a beneficial effect on persons from other rural municipalities and cities and even from other countries (e.g. organisation of cultural and sports events, public transport, road construction and maintenance, spatial planning, and the like). The main objective of the care reform was to help those local authority residents who need the 24-hour general care service.

98. Since this is not a state-level obligation within the meaning of § 154(2) of the Constitution, the applicants' right to full financing of state-level obligations from the state budget has not been violated. Therefore, the legislature did not have to stipulate that the costs related to financing the 24-hour general care service would be covered from the state budget.

99. Based on the foregoing, the Court *en banc* denies the applicants' main claim.

III

100. According to the wording of alternative claim 1, Räpina Rural Municipal Council and Põlva Rural Municipal Council request that the Supreme Court declare unconstitutional the failure of the Riigikogu to comply with the Supreme Court *en banc* judgment of 16 March 2010. The municipal councils explained at the Supreme Court hearing that they are requesting that the legislature's failure to enact acts of general application distinguishing between local government and state-level tasks be declared unconstitutional.

101. Regardless of the clarification provided at the Supreme Court hearing, § 152(2) of the Constitution and § 7 of the CRCPA do not offer a municipal council the possibility of submitting such a general claim. When challenging failure to issue an act of general application, a municipal council must define the subject-matter of its claim in terms of the legal relationships that, in its opinion, should be regulated under the Constitution.

102. It is true that the Supreme Court *en banc* in its judgment in case No 3-4-1-8-09 declared unconstitutional, inter alia, failure to issue acts of general application that would stipulate which statutory obligations imposed on local authorities are local government obligations and which are state-level obligations. At the same time, however, the judgment was based on an application by Tallinn City Council, the subject-matter of which concerned specific legislation. In a situation where the Supreme Court considered the general lack of clarity in distinguishing between state-level and local government obligations to be relevant as the root cause of the dispute when resolving a narrower application by the municipal council (paragraph 90 of the above-mentioned judgment), it was justified to declare absence of the relevant norms unconstitutional (§ 152(1) Constitution). However, this does not mean that local authorities themselves must be guaranteed the opportunity to initiate such a broad dispute again.

103. The current situation differs from the situation that existed before the Supreme Court judgment of 16 March 2010. Following the above judgment, the legislature began to distinguish between local government and state obligations at the level of laws. For example, according to § 17 of the Population Register Act, maintenance of the population register is financed from the state budget, § 25 of the Public Transport Act divides the financing of passenger transport and vehicle transport between the state and local authorities, and § 47 of the Vocational Educational Institutions Act regulates the budget of vocational educational institutions and its financing between the state and local authorities. If a specific obligation is still undefined in such a way that it interferes with the local authority constitutional guarantee, a local authority is entitled to initiate a clearly defined court dispute in that regard.

104. Based on the foregoing, alternative claim 1 as presented in the application is not admissible and its examination must be declined.

105. In paragraph 98 of the judgment in case No 3-4-1-8-09, the Supreme Court emphasised that failure to distinguish between obligations does not completely preclude the possibility for a local authority to prove that the current organisation of financing local authorities does not guarantee it sufficient funds and therefore violates its right to sufficient financial resources. The Court *en banc* considers it necessary to further clarify the following in this regard.

106. The inadequacy of a local authority funding does not always have to be assessed in relation to all the local authority's tasks as a whole. It is also conceivable to take an approach of assessing only the sufficiency of funding for the costs associated with a specific new mandatory task or the addition of a new obligation to an existing mandatory task. A local authority can indicate how much its existing costs increased with the new obligation and how much the state increased its funding or reduced other tasks and obligations. If it turns out that the money allocated to cover the new costs is not sufficient to cover the additional costs, the local authority may have the right to demand an increase in funding. However, such a claim must be exceptionally denied if the court is convinced that, despite budgetary constraints, the local authority has sufficient assets for performing the mandatory local authority tasks.

107. A local authority may submit the claim described to the administrative court (§ 44(5) Code of Administrative Court Procedure). In a complaint to the administrative court, a local authority can, for example, indicate how much its 2024 expenditure on the general care service provided outside the home increased due to the financing obligation laid down by § 22^1 of the SWA and how much money it receives from the state to cover this additional expense. As a rule, the state must compensate for the difference that arises if the local authority is unable to finance this task at least to the minimum required extent. If the administrative court finds that the local authority is unable to perform the task to the minimum required extent due to the additional obligation imposed by § 22^1 of the SWA, then in order to satisfy the complaint it must declare failure to issue an act of general application ensuring funding unconstitutional.

IV

108. Alternative claim 2 by Räpina Rural Municipal Council and Põlva Rural Municipal Council is admissible insofar as the Constitution gives rise to an obligation to ensure the stability of the financing system (see Supreme Court *en banc* judgment 3-4-1-8-09, paras 59 and 78). The requirement of a majority vote by the members of the municipal councils has also been met (see paragraph 81 of this judgment).

109. The stability of the system of financing local government tasks presupposes that local authorities must be able to act in the reasonable expectation that the regulatory arrangements established for financing their tasks will remain stable and will not unexpectedly be made less favourable to local authorities, especially in the middle of the budgetary year. Change in an unfavourable direction means, first of all, reduction through legislation in financing local government tasks (Supreme Court *en banc* judgment 3-4-1-8-09, paras 78–80).

110. The application does not refer to any legislation by which the state would have started to reduce funding local government tasks. Section 22^1(1), (2) and (5) of the SWA increased the expenses of local authorities but did not reduce their funding. Depending on the circumstances, the stability of the local government financing system may also be interfered with if the state unexpectedly increases the existing obligations of a local authority.

111. The applicants note that local authorities were not properly involved in the care reform, and when the law was passed the *vacatio legis* period left was too short for making the necessary preparations. They assert that these circumstances led to instability of the applicants' financing system. At the same time, the applicants consider it an unconstitutional violation that the legislature failed to enact an act of general application that would cover the costs arising from this instability and thereby eliminate the instability. In the case of this argument, too, it is not clear from the application how and what kind of act of general application the legislature should have enacted and what specific costs of the applicants should have been covered in order to eliminate the alleged instability of the financing system.

112. In the opinion of the Court *en banc*, no such unconstitutional situation has arisen for whose elimination alternative claim 2 is aimed at. Under § 25 of the Local Government Financial Management Act, if the Riigikogu enacts legislation after the beginning of the budgetary year of a local authority, on the basis of which the revenue of the budget of the local authority decreases or the expenditure increases in the current budgetary year, the state shall compensate for the effects of the legislation to the same extent or proportionally reduce the obligations imposed on the local authority. It should not be concluded from the provision referred to that if the state imposes obligations on a local authority at the end of the year, immediately before the beginning of the local authority's new budgetary year, which increases the local authority's expenditure in the new budgetary year, the additional expenses of the local authority may not be compensated. The purpose of the provision is to protect the local authority financial guarantee primarily against unexpected obligations (see Local Government Financial Management Act 366 SE, XI composition of the Riigikogu, explanatory memorandum, page 30). An unexpected obligation may also arise if the state imposes an obligation on a local authority at the end of the year, the effects of which will become apparent immediately in the coming new budgetary year. In such a situation, too, the local authority may not have been able

to take the obligation into account when preparing and adopting the budget. In that case, the local authority might not have a reasonable opportunity to prepare for performing the obligation imposed on it, and the state must therefore compensate for it.

113. In the present case, the Riigikogu adopted the SWA and ITA Amendment Act, which established § 22^1(1), (2) and (5) of the SWA, on 7 December 2022. The norm was published in the State Gazette on 22 December 2022, i.e. immediately before the beginning of the new budgetary year. In the situation described, the applicants may not have had a reasonable opportunity to prepare for performing the obligation imposed on them by the state. If the applicants' budget expenses for 2023 increased due to the provisions of § 22^1(1), (2) and (5) of the SWA and they were unable to reasonably amend their 2023 budget, they have the right to file a complaint with the administrative court on the basis of § 25 of the Local Government Financial Management Act to enforce their rights. Thus, a norm exists in the legal order under which the applicants can protect their rights.

114. Therefore, alternative claim 2 by Räpina Rural Municipal Council and Põlva Rural Municipal Council is denied.

V

115. Räpina Rural Municipal Council and Põlva Rural Municipal Council apply for reimbursement of legal assistance costs in the amount of 19 445.38 euros. Section 63(1) of the CRCPA provides a basis, in specific constitutional review proceedings, to order the state to reimburse the necessary and justified legal expenses of a participant in proceedings mentioned in § 10(1) clause 3 of the CRCPA (Supreme Court *en banc* order 5-18-5/33, para. 16 and the case-law cited therein). Section 63(1) of the CRCPA does not provide a basis to order the state to reimburse legal expenses incurred in adjudicating an application of a municipal council. The applicants in the present dispute are not participants in the proceedings within the meaning of § 10(1) clause 3 of the CRCPA, but within the meaning of clause 4. Therefore, the application submitted remains unexamined.

(signed digitally)