Dissenting opinion by Supreme Court Justices Hannes Kiris and Heili Sepp in case No 5-23-38

1. We agree with what was written by Supreme Court Justices Julia Laffranque, Kaupo Paal, Paavo Randma, Kalev Saare, Juhan Sarv and Urmas Volens in Part I of the dissenting opinion annexed to the Supreme Court *en banc* judgment of 5 July 2024 in case no. 5-23-38 – we similarly find that the Supreme Court should have satisfied the principal claim of Räpina and Põlva Rural Municipal Councils and of Tartu City Council and declared unconstitutional the absence of a legal provision stipulating that the 24-hour general care service provided outside the home is fully financed by the state.

2. However, unlike the majority of our colleagues, we agree with the applicants that the obligation to finance the general care service laid down by § 22^1(2) and (5) of the SWA can be regarded and treated as a separate obligation. It is an obligation to finance the service on entirely new and different grounds. In other words, we find that qualifying organisation of the 24-hour general care service as an obligation of the state or local authorities was not absolutely necessary in the present case – regardless of whether the obligation is one or the other, the obligation to finance the general care service should have been regarded as separate in the circumstances highlighted in the present case.

3. In abstract terms, it is possible to agree with the part of paragraph 95 of the judgment, which states that the obligation to bear the costs forms a coherent whole together with the service organised by a local authority, and whether and how much must be paid for the service is only one part of the conditions for receiving the service. In addition, what is written in paragraph 94 is also in itself acceptable and of great importance: that § 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; that these provisions merely divided the obligation to finance this service between the person in need of assistance and the local authority; that 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, but 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), that 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; that, 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, and 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.

4. However, what has been unjustifiably overlooked is the fact that in a situation where the majority of people in need of the 24-hour general care service are unable to pay for the service (paragraph 93 of the judgment), *merely dividing the obligation to finance this service between the person in need of assistance and the local authority* means in real life that the costs of provision of the 24-hour general care service will increase significantly for a local authority. There was no dispute on this between the participants in the proceedings. Also unjustifiably

overlooked has been the fact that the so-called *new financing obligation* for local authorities did not stem from any local community, but on the contrary – this obligation was imposed on all local authorities, without fully taking into account their specifics and opportunities.

5. Thus, we find that by changing the welfare system, the state primarily pursued national objectives that went far beyond organisation of community life and, in the course of doing so, imposed state-level obligations on local authorities regarding financing the 24-hour general care service, and these obligations can be viewed completely separately from the 24-hour general care service and must be financed from the state budget.

6. H. Kiris also concurs with the content of Part II of the dissenting opinion referred to in paragraph 1 of this dissenting opinion, also finding that in a situation where the majority of the Court *en banc* decided to deny the applicants' principal claim, the Supreme Court should have examined the merits of alternative claim 1 by Räpina Rural Municipal Council and Põlva Rural Municipal Council.

(signed digitally)