



# CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

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## JUDGMENT

on behalf of the Republic of Latvia

Rīga, 20 November 2024

Case No. 2023-43-03

The Constitutional Court composed of the chairperson of the court Irēna Kucina, judges Jānis Neimanis, Anita Rodiņa, Jautrīte Briede, Veronika Krūmiņa, and Mārtiņš Mits,

on the basis of the application of the Ombudsman,

pursuant to Article 85 of the Constitution of the Republic of Latvia and Section 16, Clause 3, Section 17, Paragraph one, Clause 8, and Section 28.<sup>1</sup> of the Constitutional Court Law,

on 22 October 2024, in the written procedure, examined the following case:

**“On conformity of Paragraph 19 of Rīga City Council Binding Regulation No. RD-23-199-sn of 26 April 2023, Procedures for the Registration and Examination of Applications for the Enrolment of Children in Grade 1 in the Educational Institutions of the Local Government of Rīga State City, with Articles 64, 91, and 110 of the Constitution of the Republic of Latvia”.**

### Establishing Part

1. Paragraph 19 of the local government of Rīga State city Binding Regulation No. RD-23-199-sn of 26 April 2023, Procedures for the Registration and Examination of Applications for the Enrolment of Children in Grade 1 in the Educational Institutions of the Local Government of Rīga State City, (hereinafter –

Binding Regulation No. 199) (hereinafter – the contested norm) prescribes the following:

“In the event of vacant places, the institution may include in the list of applicants for Grade 1 those children who have reached the age of six by 1 September of the relevant year in compliance with the order of priority laid down in the binding regulation.”

**2. The applicant, i.e. the Ombudsman,** (hereinafter – the applicant) considers that the contested norm fails to conform to Articles 64, 91, and 110 of the Constitution of the Republic of Latvia (hereinafter – the Constitution).

**2.1.** According to the applicant, all children have an equal right to receive primary education, regardless of whether they are six or seven years old in the year in which they start primary education. However, the contested norm provides for different treatment of children depending on their age, as priority is given to children who turn seven in the relevant calendar year. Such differential treatment is contrary to the principle of equality guaranteed by Article 91 of the Constitution and also is in violation of parental rights to decide on the education of their children established in Article 110 of the Constitution. In addition, the applicant considers that the local government of Rīga State city, by adopting the contested norm, has violated the limits of its authority.

The State has the obligation to ensure that all children in Latvia may receive primary education. The physical and psychological preparedness of children can vary considerably when they start school. Children of the same age may have different functional abilities. Therefore, the development of every child should be assessed on an individual basis. In order to determine whether a child is ready for the curriculum included in Grade 1, it would be necessary not only to take into account the age of the child, but also to assess his or her social skills and personal development, awareness of the environment and social life, language development, as well as literacy, mathematical concepts and other skills.

It could be assumed that the legislator has recognised the individual development needs of the child and has therefore set a different age for starting

primary education. In this way, the best interests of the child are safeguarded, namely his or her interest in pursuing education to the best of his or her ability. Moreover, parental authority to assess these abilities is respected this way.

The purpose of Section 32, Paragraphs two and three of the General Education Law is to ensure that children have the opportunity to receive education in accordance with their abilities. Children who start primary education in the calendar year in which they turn seven are comparable and in the same position as children whose parents have deemed that their health condition and psychological preparedness are sufficient to start basic education one year earlier.

The contested norm provides for a difference in treatment between children who start primary education in the calendar year in which they turn seven and children whose health condition and psychological preparedness allow them to start primary education one year earlier. In particular, children who turn seven in the relevant calendar year are enrolled in the local government of Rīga State city educational institutions in priority order compared to children who, according to the wishes of their parents, start primary education a year earlier. If the educational institution chosen by the parents has a waiting list for Grade 1 that exceeds the capacity of the institution, children who have reached the age of six will not be able to enrol in that educational institution.

The procedures for the enrolment of children who have reached the age of six in general education institutions are based on the overcrowding of educational institutions and the shortage of available places, which can prevent children who have reached the age of seven from starting primary education. The objective of the contested norm is to ensure the right of children who have reached the age of seven to start primary education, and this objective coincides with the legitimate objective of ensuring the well-being of society.

The local government has the obligation to ensure that all children have a place in an educational institution. At the start of the 2021/2022 school year, there were 511 vacant places in 55 local government educational institutions, and 531 vacant places in 58 educational institutions in the 2022/2023 school year. So there are vacant places in several educational institutions in Rīga. Thus, the

contested norm, instead of ensuring that children who have reached the age of seven are enrolled in an educational institution and are thus given the opportunity to receive primary education, creates conditions where children who have reached the age of six do not create competition for children who have reached the age of seven in terms of access to primary education in any educational institution.

The local government has created a situation where parents whose children start primary education a year earlier are restricted of the right to choose the educational institution closest to their place of residence and where the child would start Grade 1, as provided for by law. These six-year-old children are forced to start primary education in the educational institution in the administrative territory of the local government of Rīga State city where there are vacant places.

Even if the contested norm did not exist, six-year-old children would still not be able to compete with seven-year-old children for enrolment any educational institution. According to Paragraph 7 of Binding Regulation No. 199, the legal representative of the child may apply the child for education in Grade 1 when the child has reached the age of compulsory education (five years). Paragraph 18 of this Regulation provides that children are enrolled in an educational institution in the order of registration of their declared place of residence or in the order of submission of applications. This means that children of parents who have registered their declared place of residence or submitted the application for their child to be enrolled in an educational institution the earliest will be given priority. Seven-year-old children are born earlier than six-year-old children, so their declared place of residence may be registered earlier. Similarly, parents of seven-year-old children can also apply for enrolment earlier than parents of six-year-old children, simply because seven-year-old children turn five earlier.

THE CONTESTED norm places six-year-old children in an unequal situation compared to even those children whose place of residence is not declared in the territorial unit attached to the relevant educational institution or in the administrative territory of the local government of Rīga State city in general. This is not proportionate to the right of children to equal opportunities to receive primary education in the educational institution closest to their place of residence.

The restriction established by the contested norm is not appropriate for the achievement of the legitimate objective, since the local government must in any case ensure the enrolment of all children in the educational institutions of the local government. Such provision is not necessary, as six-year-old children do not compete with seven-year-old children, if only because the date of birth, and therefore the moment of registration, is different. Nor is there any positive benefit to society from limiting the opportunities for children who have reached the age of six to receive education in the educational institution closest to their place of residence. By such actions, the local government of Rīga State city is significantly infringing the rights of children and parents.

**2.2.** Although the State has the right to choose the manner in which the parental rights established in Article 110 of the Constitution will be protected, this obligation of the State may not be declaratory. If the State has granted certain rights to parents by law, these rights are protected by the Constitution.

The Convention on the Rights of the Child emphasises the rights and responsibilities of parents in ensuring children's rights to ensure that children can fully exercise all their human rights, including social and political rights. Children only gradually and over time develop the ability not only to exercise their rights, but also to claim their rights. Member States need to take the necessary measures to ensure that parents are able to assume primary responsibility for their children in accordance with their rights and obligations in accordance with the Convention on the Rights of the Child. States Parties have the obligation to support parents in fulfilling their responsibilities.

The right to education is one of the most fundamental rights of children. There is also no denying that the role of parents in their children's education is crucial. It is parents who are in the best position to assess whether a child is ready to start primary education. Legislation guarantees parents the right to decide on their children's education. However, the contested norm restricts parental rights to choose the educational institution where their child will receive primary education and the right to decide at what age it would be best for the child to start education.

**2.3.** The applicant considers that the local government of Rīga State city has violated the limits of its authority granted to it by law in respect of taking care of children's education. The local government has the statutory obligation to ensure children's right to education. Binding Regulation No. 199, which also contains the contested norm, was adopted to fulfil this obligation. However, in exercising its autonomous functions, a local government enjoys discretion to the extent that it is not limited by legal norms. Section 17, Paragraph one of the Education Law imposes a positive obligation on a local government to organise the education of children declared in its administrative territory on the basis of the fact of registration of the declared place of residence and the distance of the place of residence from the educational institution.

The local government does not have the authority to determine the procedures for the enrolment of children in primary education institutions established by local governments. Such authorisation is granted to the Cabinet of Ministers (hereinafter – the Cabinet) by Section 4, Clause 18 of the General Education Law. The Cabinet exercised this authorisation on 11 January 2022 by adopting Cabinet Regulation No. 11, Procedures for Enrolling Educatees in General Education Programmes and Discharging from Them, and also the Mandatory Requirements for Moving Educatees up into the Next Grade, (hereinafter – Regulation No. 11). The function of a local government is only to determine the procedures for the registration and ranking applications for the enrolment of a child in Grade 1. The local government has the obligation to organise the queue of applicants in such a way as to ensure priority enrolment of children whose place of residence is closest to the particular educational institution. The local government may also set additional priority criteria that do not conflict with other laws and the principle of declaring a place of residence.

Neither the Education Law nor other laws and regulations determine the competence of a local government to decide on the age at which a child's education should begin, nor do they grant a local government the right to restrict the right to education of a child on the basis of his or her age. In the case of primary education, a local government has authorisation to ensure the right of children declared in its

administrative territory to receive education in the local government educational institution closest to their place of residence. If a regulatory enactment issued by a local government creates a legal situation that is contrary to this authorisation, then it shall be deemed that the local government has issued this regulatory enactment in excess of its competence.

Thus, the local government of Rīga State city has acted contrary to the principle of separation of powers and has violated the authority granted to it by the legislator in Section 4, Paragraph one, Clause 4 of the Local Government Law and Section 17, Paragraph one of the Education Law. In addition, the local government has interfered with parental rights to assess their child's ability to start primary education at the age of six.

**3. The authority which issued the contested act, i.e. the local government of Rīga State city,** considers that the proceedings in the present case should be terminated. The applicant has asked for clarification of the application of Section 32 of the General Education Law, i.e. whether this legal norm provides for the right to be enrolled in a particular educational institution to the same extent for a seven-year-old child and a six-year-old child whose parents wish him or her to start primary education one year earlier.

**3.1.** The compulsory nature of primary education is provided for in Article 112 of the Constitution and also derives from the international commitments of Latvia. The abovementioned is specified in Section 4 of the Education Law and Section 32, Paragraph one of the General Education Law. Neither the Constitution nor international human rights norms determine the age at which primary education should be started. The legislator is therefore granted discretionary power.

Participation in a particular level of education, especially pre-primary and primary education, is closely linked to the age of the educatee. Section 7 of the Education Law distinguishes between “children of pre-school age” and “children of the compulsory education age”. Children who have not reached the age of compulsory primary education, i.e. seven years of age, fall into the first of the

aforementioned groups. The basic principle is that primary education starts in the calendar year in which the child turns seven.

The age of compulsory primary education is deliberately determined by the legislator, taking into account the content of primary education set out in the National Basic Education Standard, the teaching load for this level of education, research on child development at certain ages and other circumstances. The high physical and psychological stress imposed on a child between the ages of five and six has a significant impact on his or her development and could cause or increase psychiatric and somatic disorders such as maladjustment, hyperactivity, attention deficit, anxiety, and frequent illness.

Seven-year-old children have not only the right but also the duty to start primary education. Six-year-old children, on the other hand, have the right but not the obligation to do so. So there is different content of rights and obligations for these children. It follows from Section 20, Paragraph two and Section 32, Paragraph two of the General Education Law that the age of the child is a decisive criterion in the field of education. For example, even if a particularly talented child who turns five in the relevant calendar year were able to start primary school, he or she would not be given such opportunity.

State-funded compulsory primary education is covered within the scope of the right to education. Compulsory primary education implies both a positive obligation of the State towards the individual and the obligation of the individual towards the State and society, i.e. the obligation to start a primary education programme at a certain age. These obligations of the State and the individual have been given constitutional significance in the Latvian legal system and form the basis of the legal framework for basic education. The contested norm has been adopted within the framework of this general legal regulation, specifying the principles recognised by the legislator and ensuring their implementation in the circumstances existing in the territory of the local government.

In accordance with the principle of subsidiarity, the Local Government Law and the Education Law primarily entrust the implementation of the elements of the right to education, i.e. educational opportunity and accessibility, to local

governments at the primary education level. Section 17, Paragraph one of the Education Law stipulates that a local government has the obligation to ensure that the children whose declared place of residence is in the administrative territory of the local government have the opportunity to receive pre-school education and primary education at the local government educational institution closest to the place of residence of the child. This obligation is part of the autonomous function of the local government as laid down in Section 4, Paragraph one, Clause 4 of the Local Government Law.

In order to fully exercise this autonomous function, local governments have been granted the competence to plan the school network. Local governments have a wide margin of discretion in this matter. Instead of the individual interests (preferences) of each child, such factors as the geographical location of educational institutions and the capacity of classrooms, the population density of the relevant territorial unit, trends in housing and infrastructure development are taken into account when planning the network of educational institutions. The concept of the nearest educational institution requires only that the respective institution is physically safe and reasonably accessible.

It follows from the international legal norms that the State has a wide margin of discretion in the implementation of the right to education, taking into account that compulsory free primary education for all children must be provided within a reasonable distance of their place of residence. However, State resources are not inexhaustible. Section 17, Paragraph one of the Education Law does not impose an absolute obligation on a local government to ensure that every child is enrolled in the educational institution that is geographically closest to his or her place of residence. The local government has the obligation to prioritise the enrolment of each child in the educational institution closest to his or her place of residence when planning the school network, but this obligation must be weighed against the actual possibilities of the local government and the rights and legitimate interests of other children. The local government is responsible for coordinating the distribution of educatees between educational institutions.

There may be situations when it is necessary and legally permissible to refuse to enrol a child in a particular educational institution, otherwise the local government would not be able to exercise its autonomous function. A child who is refused enrolment in Grade 1 at a particular educational institution is not denied the opportunity to receive an education appropriate to his or her ability and age, as he or she is offered the chance to start primary education at another educational institution. This meets the requirements of Section 17, Paragraph one of the Education Law.

Local governments have discretion to determine the most appropriate way of exercising their autonomous functions in the interests of their residents, insofar as this discretion is not restricted by other legal norms. According to Article 4 of the European Charter of Local Self-Government, no other central or regional authority may call into question or restrict the autonomous function granted to a local government, unless provided for by law. The law does not regulate what to do if the number of children who have applied for enrolment in Grade 1 of a particular educational institution exceeds the number of places available. The law restricts the discretion of the local government only to a relatively small extent, i.e. Section 31 of the General Education Law restricts only the right to organise entrance examinations or to set enrolment requirements.

In view of the above, Section 4, Paragraph one, Clause 4 of the Local Government Law and Section 17 of the Education Law in conjunction with Section 44, Paragraph two of the Local Government Law empower the local government council to determine in binding regulations the principles for the enrolment of children in local government primary educational institutions, including priority criteria.

The education sector needs to regulate many technical aspects related to the organisational (procedural) arrangements for learning general education content. The order of priority in the enrolment of educatees is one of the matters that the legislator has rightly entrusted to local governments, in accordance with the principle of subsidiarity. Due to objective circumstances in the local government of Rīga State city, it is often not possible to enrol all the children applied for

Grade 1 at a particular educational institution. By the contested norm the local government of Rīga State city has implemented the authorisation granted thereto.

Initially, the regulation similar to the contested norm was introduced because in practice a number of cases had been established when seven-year-old children were not enrolled to an educational institution because six-year-old children were included in the queue of applicants. Thus, the local government was not able to enrol children of compulsory primary education age in a particular educational institution, as six-year-old children had to be enrolled instead. Accordingly, it was necessary to balance the desire of some six-year-old children to be enrolled in a particular educational institution with the need to ensure that children of compulsory primary education age were able to fulfil their obligation as closely as possible to the principle of the nearest educational institution.

The local government of Rīga State city has the discretion to adapt the performance of the autonomous function to the circumstances of the particular administrative territory. The contested norm was adopted with the aim to ensure the implementation of the requirements and priorities set by the legislator in accordance with the principle of subsidiarity.

**3.2.** The groups of persons defined in Section 32, Paragraphs two and three of the General Education Law both have in common the fact that the legislator has presumed the ability of these persons to start primary education in the relevant school year. However, these groups of persons are not in equal and, according to certain criteria, comparable circumstances. There is an important additional consideration, namely that only seven-year-old children have the obligation to start primary education. Children who want to start primary education a year earlier do not have such obligation.

Even if it is accepted that the two groups of persons are comparable, the contested norm does not provide for a less favourable regulation for one group of children with regard to enrolment to a particular educational institution. The contested norm provides only that the child must wait for the fulfilment of a certain criterion, namely the age of compulsory education.

The legitimate objective of the contested norm is to protect the rights of others, i.e. to ensure that seven-year-old children have a priority opportunity to start primary education in the educational institution closest to their place of residence. The contested norm is appropriate to achieve the legitimate objective. Every educatee referred to in Section 32 of the General Education Law is guaranteed access to the network of primary education institutions in the local government. The contested norm is aimed at ensuring priority enrolment of the children of the compulsory education age in a particular educational institution.

In the administrative territory of the local government of Rīga State city, it is not possible to ensure that every child is enrolled in a specific educational institution according to his or her individual needs. However, it is necessary to ensure that children who already have the obligation to start primary education are enrolled as a priority. Consequently, no less restrictive measures are available.

The restriction provided for in the contested norm is proportionate, since it is in the public interest to enrol seven-year-old children in educational institutions. The number of places in each educational institution is limited and is aimed at ensuring the best interests of children, i.e. an appropriate learning environment, sufficient space, hygiene requirements, teachers being able to give each child the attention they deserve, etc.

The contested norm may not be in the interests of a narrow group of persons, i.e. six-year-old children and their parents, and only in a particular educational institution where the number of applicants exceeds the capacity of Grade 1. Moreover, these children are not restricted of their right to education because alternative solutions are provided. This means offering children the opportunity to receive primary education according to their abilities in another educational institution that is reasonably close to them, while also respecting the wishes of the children and their parents as regards the orientation of the curriculum.

In the so-called popular educational institutions of the local government of Rīga State city, the number of six-year-old applicants is small compared to the number of seven-year-old applicants. Moreover, the number of applicants to these

schools is generally so high that even a significant, sometimes even a majority, of seven-year-old children cannot be enrolled in the selected school.

**3.3.** Since within the school network of the local government of Rīga State city also six-year-old children are provided with the opportunity to start primary education, there is no restriction of the parental rights provided for in Section 32, Paragraph three of the General Education Law. The contested norm also does not restrict the right of parents to choose the educational institution where their child will receive education.

**4. The Saeima, i.e. invited party,** considers that the application mainly seeks an interpretation of Section 32 of the General Education Law and clarification of the application of Paragraphs two and three of the same Section. This is not within the competence of the Constitutional Court.

The obligation to ensure that a child has the opportunity to receive primary education at the closest local government educational institution to his or her place of residence is part of the autonomous function of the local government, i.e. to take care of the education of inhabitants.

In addition to Article 112 of the Constitution, the compulsory nature of primary education is regulated by Section 32 of the General Education Law. Accordingly, a child starts primary education at the age of seven or can start one year earlier.

The Latvian education system has four levels, i.e. pre-primary, primary, secondary, and higher education. Each successive level of education can be obtained by progressing sequentially from the previous level. Each stage has its own characteristics and brings together children of a certain age with similar abilities, needs, and interests. The age criterion is applicable to the attainment of both pre-primary and primary education. Accordingly, a child completes the pre-primary education programme until the age of seven and starts primary education programme in the year he or she turns seven.

The legal norm allowing for an earlier start of primary education is an exception to the normatively established structure of education levels and the age

criterion attached thereto. Determining the age of entry to primary education at seven years of age is a deliberate decision by the legislator, following lengthy and detailed discussions where different views and different opinions were obtained on whether the introduction of Grade 1 at the age of six could have a negative impact on the physical and psychological health of a child. However, the legislator has provided for the possibility of adjusting the general principle, taking into account the individual situation, abilities and interests of each child, together with the wishes of parents and the opinion of specialists.

Section 32, Paragraph three of the General Education Law primarily should be assessed in terms of the interests and rights of the child, not the wishes and rights of the parents. The decisive criterion for starting primary education a year before the compulsory education age is not the wish expressed by the child's parents, but the child's own physical and psychological preparedness. The principle of the best interests of the child requires an assessment of the child's abilities and needs, as well as the child's personal views on whether he or she should stay in kindergarten or start Grade 1.

The principle of the best interests of the child should be interpreted as meaning that the child's physical and psychological preparedness is assessed not only by his or her parents, but also by a specialist. It should be noted that parental assessment can be subjective and reflect parents' interest in their child starting primary education as early as possible, rather than their child's actual readiness and interests. The best interests of a child and wishes of parents may appear different. It is in the best interests of a child to receive an education that corresponds to his or her abilities. However, much depends on the individual situation, as it may often be in the best interests of a child not to start primary education earlier than the generally determined age and to be able 'to enjoy childhood' for one more year.

Only after establishing the child's readiness to start primary education it can be discussed further whether or not the parents are willing to take up the opportunity for their child to start primary education at the age of six. If both the child and his or her parents wish to pursue this opportunity, they should be aware that the parents' freedom of choice as to which educational institution the child

attends is not unlimited. The legislator has authorised the local government ‘to put into practice’ Section 32, Paragraph three of the General Education Law, i.e. to ensure that a child has the opportunity to start primary education at the age of six in one of the educational institutions of the local government. The fulfilment of this obligation depends on the capacities and resources of the local government and must be balanced against the rights and legitimate interests of other children, both children who wish to start Grade 1 at the age of six and seven-year-old children who have the legal obligation to start Grade 1.

Although the local government has the obligation to ensure that a child has the opportunity to receive primary education in the educational institution of the local government closest to his or her place of residence, in accordance with the principle contained Section 17, Paragraph one of the Education Law, this is not an absolute obligation that the local government would be able to fulfil in every case. This is an obligation that the local government must make every effort to fulfil, taking into account its capacity and available resources, the location of educational institutions, and balancing the rights and legitimate interests of all children.

By adopting the contested norm, the local government of Rīga State city has fulfilled its autonomous function, i.e. to ensure the provision of primary education. When planning the local government school network and organising the enrolment of children in Grade 1, the local government has established a priority order for enrolling children in an educational institution, while also respecting the principle of the closest educational institution to the place of residence. The local government has complied with the intention of the legislator to ensure that the start of primary education is age-related, i.e. primary education is compulsory for children from the age of seven. The local government has the discretion to balance the interests of all children within the scope of its authorisation and to give priority to children who have reached the age from which primary education is compulsory to be enrolled in Grade 1.

Section 32 of the General Education Law distinguishes between the two groups of children. In particular, for seven-year-old children, the start of primary education is compulsory and cannot be postponed to the following school year

(except as provided in Section 32, Paragraph three of the General Education Law). However, six-year-old children have no legal obligation yet to start primary education, which can be postponed until the following school year.

Nevertheless, even if these groups of children were considered comparable and in the same circumstances, there are objective and reasonable grounds for the difference in treatment. The contested norm serves to ensure that children who have reached the age of compulsory primary education have a priority opportunity to start the primary education programme at the educational institution closest to their place of residence. This objective is consistent with the legitimate objective, i.e. the protection of the rights of others.

When assessing the proportionality of the contested norm, it should be taken into account that six-year-old children are not restricted of the opportunity to start primary education. This opportunity is provided according to the capacities of the local government, the available resources thereof, and the location of educational institutions. For these children, the local government has the obligation to comply, to the extent possible, with the principle of the educational institution that is closest to the place of residence of the child. As part of the proportionality test, other specific circumstances in the territory of the relevant local government must be taken into account as well.

The principle provided for in Section 57, Clause 1 of the Education Law that the parents of a child have the right to choose the educational institution where the child will receive his or her education is not absolute. The freedom of choice of parents has limits, depending on other legal norms and also on the actual circumstances of the relevant local government, including the location of educational institutions and the resources available to the local government. The right of choice must be balanced against the rights and legitimate interests of other parents and children.

**5. The Cabinet, i.e. invited party**, whose opinion is shared also by **the Ministry of Education and Science, i.e. invited party**, points out that the authority of the local government to issue Binding Regulation No. 199, establishing

the conditions for the organisation and performance of the autonomous function, derives from Section 4, Paragraph one, Clause 4 and Section 44, Paragraph two of the Local Government Law.

The scope of the rights and obligations of a local government in the performance of its autonomous function, i.e. to take care of the education of inhabitants, is laid down in the Education Law and the General Education Law and specified in Regulation No. 11. This Regulation prescribes the general procedures by which educatees shall be enrolled in general education programmes, i.e. the procedures for submitting the required documents and the information they should contain. The Regulation does not prescribe the procedures for the registration and examination of applications for the enrolment of children in Grade 1.

The discretion of a local government in implementing Section 32, Paragraph three of the General Education Law is limited by the obligation to ensure that children have the opportunity to receive primary education in the educational institution that is closest to their place of residence, the premises of the educational institution and their layout, the number of teachers, as well as the rights of other children to quality education appropriate to their age. It is therefore the autonomous function of the local government to ensure access to and availability of primary education. It is the responsibility of the local government to set the requirements and criteria for enrolling children in the educational institutions of the local government and to choose the best solutions for specific situations. The local government has the discretion to choose which legal solution it will enshrine in the binding regulations.

In accordance with the principle of autonomy of competences enshrined in the European Charter of Local Self-Government, the hierarchically higher public authority must refrain from interfering in the exercise of the autonomous competences of a local government, except where provided for by law. Thus, a local government is entitled to exercise the autonomous competences granted thereto independently in the interests of the local inhabitants.

The local government of Rīga State city, when establishing the procedures for the enrolment of children in Grade 1, has acted within the scope of authorisation

granted thereto by law, i.e. within the scope of the autonomous function granted to the local government by the Education Law, the Law on the Protection of the Children's Rights, and the Local Government Law.

Due to various size and density of the population, including children of primary school age, from one local government to another, some local governments may have more applicants than they can accommodate. It is therefore objectively necessary to establish common procedures for examining applications for the enrolment of children in educational institutions and also to set certain priorities. In addition, taking into account the autonomous function of the local government, i.e. to take care of the education of inhabitants, including providing the opportunity to receive compulsory education, as well as the autonomy of local government competences, it is proportionate and appropriate that these procedures are prescribed by the local government through an external normative act, i.e. binding regulations.

If a child of primary education age is not enrolled in a particular educational institution, then, in accordance with Paragraph 11 of Regulation No. 11 and Paragraph 20 of Binding Regulation No. 199, the child's parent is informed of the possibility to enrol the child in Grade 1 in other educational institutions with vacancies in the territory of the local government. These procedures allow also six-year-old children to start primary education.

The Cabinet considers that the contested norm has been issued within the framework of the authorisation granted to the local government and it prescribes the procedures for the performance of the autonomous function of the local government, i.e. to take care of the education of inhabitants.

According to the Latvian education system, children start primary education when they reach the age of seven. However, the legislator has allowed that children who have reached the age of six may also start primary education. Thus, depending on the health condition and psychological preparedness of the child, the duration of the pre-primary education programme may be shortened by one year according to the wishes of parents. This means that two groups of children can be distinguished depending on their age: children who have reached the age of

compulsory primary education (seven-year-old children) and children who can start primary education one year earlier (six-year-old children).

The legislator has determined the groups of children for whom education at a certain level is compulsory, taking into account their age. Pre-primary education is compulsory from five to seven years of age and primary education is compulsory in the calendar year in which the child turns seven. However, children are also allowed to start primary education one year earlier.

Six-year-old children can start primary education, but it is not their obligation. Seven-year-old children, however, have the obligation to start primary education. These groups of children are not in equal and, according to certain criteria, comparable circumstances. The contested norm provides for the differential treatment of six-year-old children and seven-year-old children, since they are not in equal and, according to certain criteria, comparable circumstances.

Parental rights are fundamental to ensuring the well-being and development of children. This is something that both parents and the State should respect. The legislator, in the fulfilment of the obligation for the State to ensure the compulsory nature of primary education and parental rights, has specified parental rights in the implementation of the education process in the Education Law. According to Section 57 of the Education Law, parents have the right to choose the educational institution where the child will receive his or her education. Section 58, Paragraph two of the Law stipulates that parents are responsible for ensuring that the child receives compulsory education. Parents therefore have the right to choose the educational institution their child will attend. This right is fundamental for parents to participate in their child's education and to choose the right environment for their child's development.

However, parental rights to choose the educational institution where their child receives education are not absolute. They are not beyond the resources available to the educational institution, including premises, and the need to comply with hygiene requirements. The law does not imply the obligation on the part of an educational institution to enrol six-year-old children in Grade 1, regardless of any circumstances, including the capacity of the educational institution. Therefore, the

local government, in the performance of its autonomous function and being aware of the situation in its administrative territory, should govern the procedures for the enrolment of children in Grade 1, regardless of wishes of parents. Thus, parental rights to choose a particular educational institution where their six-year-old child will start primary education extends to the extent that it does not affect the rights and legitimate interests of seven-year-old children. The rights of seven-year-old children in the present case prevail over the rights and legitimate interests of six-year-old children, and also over the rights of their parents to choose a particular educational institution. Consequently, these parental rights have been restricted on reasonable grounds.

By implementing the right to compulsory primary education guaranteed by the Constitution and performing its autonomous function, the local government has established an effective mechanism for implementing legal norms and monitoring their application through binding regulations. The latter conforms to the first sentence of Section 11, Paragraph one of the Law on the Protection of the Children's Rights.

### **Concluding Part**

6. According to the local government of Rīga State city and the *Saeima*, the application seeks clarification of the content of Section 32 of the General Education Law, i.e. whether it provides for identical rights to enrol in a particular educational institution in the same calendar year for an educatee who turns seven in that year and an educatee whose parents wish him or her to start primary education at the age of six. According to these authorities, the proceedings in the case should be terminated because the applicant had essentially applied to the Constitutional Court regarding the application of the contested norm, but this could not serve as basis for assessing the constitutionality of the legal norm.

Section 32, Paragraph two of the General Education Law provides that primary education shall be started in the calendar year when the educatee attains seven years of age. Meanwhile, Paragraph three of the same Section provides that,

according to the wishes of parents, the educatee is entitled to start primary education one year earlier. Paragraph 18 of Binding Regulation No. 199 stipulates the obligation of an educational institution to draw up a list of applicants for Grade 1 who attain seven years of age in the relevant calendar year. However, according to the contested norm, children who have reached the age of six by 1 September of the relevant year may be included in the list of applicants for Grade 1 of an educational institution if there are any vacant places.

Hence, according to the contested norm, a six-year-old educatee may be included in the list of applicants for Grade 1 of the relevant educational institution only if there is a vacant place after all seven-year-old educatees who have applied have been included in the list. The abovementioned procedures are not dependent on the application of the contested norm, since the contested norm establishes precisely such procedures.

**Thus, legal proceedings in the present case should not be terminated.**

7. The applicant has requested to assess conformity of the contested norm with several norms of the Constitution, i.e. Article 64, Article 91, and Article 110 of the Constitution. Consequently, the Constitutional Court should determine the most effective approach to assessing that conformity.

**7.1.** Article 110 of the Constitution stipulates the following: “The State shall protect and support marriage – a union between a man and a woman, the family, the rights of parents and rights of the child. The State shall provide special support to disabled children, children left without parental care or who have suffered from violence.”

Article 110 of the Constitution establishes the obligation for the State to protect the rights of parents and rights of the child. Parental rights cover the right to take care of own children also in matters related to the education of children (*cf. Paragraph 10 of the judgment of the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106*). Thus, the legislator must respect the parental rights to decide on matters related to the care of the child, as included in the first sentence of Article 110 of the Constitution, and must provide for measures to exercise these

rights. The applicant has raised arguments that the parental rights included in the first sentence of Article 110 of the Constitution might have been infringed.

It follows from the observations of the parties to the proceedings that the issue in dispute is whether the local government of Rīga State city has ensured accessible education for six-year-old educatees, taking into account also the parental rights to decide at what age and in which educational institution their children will start their education. The concerns raised essentially relate to whether the local government has ensured the right to education for six-year-old educatees.

The right to education is enshrined in Article 112 of the Constitution. The application does not formulate a claim on conformity of the contested norm with Article 112 of the Constitution; however, the Constitution is a unitary whole and the norms contained therein are to be interpreted systemically. Taking into account the principle of unity of the Constitution and the principles of the Constitutional Court proceedings, the Constitutional Court may also examine conformity of the contested norms with such norms of the Constitution in respect of conformity with which the case has not been initiated (*cf. Paragraph 14.2 of the judgment of the Constitutional Court of 12 July 2024 in Case No. 2023-15-01*). Consequently, the Constitutional Court shall also assess the conformity of the contested norm with Article 112 of the Constitution.

**7.2.** Article 112 of the Constitution stipulates the following: “Everyone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory.”

The right to education constitutes economic, social, and cultural rights and requires the State to take a number of positive measures, e.g. provision of accessible and free education (*cf. Paragraph 20 of the judgment of the Constitutional Court of 23 April 2019 in case No. 2018-12-01*).

Article 112 of the Constitution guarantees the right to benefit fully from all opportunities offered by the education system. The right to education allows for a certain degree of discretion of the State with regard to the type of education system the State establishes (*see Paragraph 12 of the judgment of the Constitutional Court of 19 June 2020 in Case No. 2019-20-03*). The State has the

obligation to create an education system that is accessible to all educatees, i.e. a system that also respects the parental rights to decide on matters related to the child's education in accordance with their views of the child's best interests, on the one hand, and the obligation for the State to supervise the education system, on the other hand. An accessible education system must therefore comply with the principles of educational opportunity, accessibility, acceptability, and adaptability (*cf. Paragraph 20 of the judgment of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01 and Paragraph 14.4 of the judgment of the Constitutional Court of 12 July 2024 in Case No. 2023-15-01*).

In the present case, the principles of educational opportunity and accessibility are relevant. Educational opportunity means the provision of a sufficient number of educational institutions and educational programmes to meet the needs of educatees, so as to guarantee the achievement of educational objectives. Access to education must be ensured by creating equal opportunities and eliminating obstacles that could arise in the exercise of educational opportunities (*see Paragraph 20 of the judgment of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01 and Paragraph 14.4 of the judgment of the Constitutional Court of 12 July 2024 in Case No. 2023-15-01*).

**7.3.** In the present case, it is also necessary to assess to what extent the parental rights arising from Articles 110 and 112 of the Constitution to ensure that their children's right to education is exercised extends.

When ascertaining the content of fundamental human rights established in the Constitution, international obligations undertaken by Latvia in the field of human rights should also be taken into account (*see Paragraph 16 of the judgment of the Constitutional Court of 15 February 2024 in Case No. 2023-04-0106*).

According to Article 5 of the Convention on the Rights of the Child, States Parties shall respect the responsibilities, rights and duties of parents to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention. Article 28 of the Convention on the Rights of the Child stipulates the right of the child to education.

According to Article 18(1) of the Convention on the Rights of the Child, parents have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. The United Nations Committee on the Rights of the Child has recognised that in early childhood (up to the age of eight), the parents of a young child play a crucial role in the exercise of his or her rights. Parents are the main people through whom the rights of young children can be exercised. The Committee, while recognising the role of parents in achieving this goal, has called on Member States to ensure that all young children receive an education (*see UN Committee on the rights of the child (CRC), General Comment No. 7 (2005): Implementing child rights in early childhood, 20 September 2006, CRC/C/GC/7/REV.1, pp. 7–8, 14*).

Since children are not able to fully exercise their right to education on their own until a certain age, parental involvement is essential. Thus, it is the parents who have the right and the duty to make decisions relating to the right to education of the child, e.g. the right to choose an educational institution closest to the place of residence of the child where he or she will receive education, as well as the right to have the child start primary education at an educational institution chosen by the parents.

**7.4.** In the present case the applicant has raised arguments that the local government of Rīga State city has failed to ensure the enrolment of six-year-old educatees in Grade 1 of an educational institution selected by their parents. Consequently, parents are restricted of the right to decide at what age their child will start primary education.

However, parental rights should be exercisable within the scope of the national education system. It derives from Article 112 of the Constitution that the State has the obligation to establish an education system in which accessible education is ensured to educatees, taking into account the parental rights to decide on exercising the right to education of their child. Parental preference for a particular educational institution is only one of the considerations that may be taken into account when deciding on whether to enrol a child in an educational institution. The State does not have the obligation to ensure that a child receives

primary education in a particular educational institution. Therefore, the Constitutional Court will assess whether the local government of Rīga State city has fulfilled the positive obligation arising from Articles 110 and 112 of the Constitution to establish an accessible education system, taking into account the parental rights to decide on exercising the right to education of their child.

In view of the above, the Constitutional Court shall examine whether:

- 1) measures have been taken to ensure that educatees receive primary education;
- 2) these measures have been taken appropriately, i.e. whether the educatees of the local government of Rīga State city have the opportunity to exercise their rights;
- 3) the general principles of law deriving from the Constitution and other norms of the Constitution, including the principle of legal equality contained in Article 91 of the Constitution, have been complied with. The Constitutional Court shall assess conformity of the contested norm with Article 91 of the Constitution by also examining whether the alleged differential treatment has been established by a legal norm adopted according to appropriate procedures, including in accordance with Article 64 of the Constitution.

**8.** The right to education is guaranteed by the State. The State must ensure such regulatory framework which allows any person to achieve education goals according to the specific education level and type (*see Paragraph 20 of the judgment of the Constitutional Court of 23 April 2019 in Case No. 2018-12-01 and Paragraph 29.1 of the judgment of the Constitutional Court of 10 July 2024 in Case No. 2022-45-01*).

According to Section 5, Paragraph one of the Education Law, the Latvian education system consists of four levels, i.e. pre-primary, primary, secondary, and higher education. Section 3, Paragraph one of the General Education Law stipulates that general education shall be implemented at the following levels of general education: 1) pre-primary education; 2) primary education; 3) secondary education. According to Section 5, Paragraph two of the Education Law, an educatee has the right to receive education at each subsequent level, successively proceeding from one level of education to the next.

**8.1.** According to Section 4 of the Education Law, preparation of children from the age of five for primary education and the continuation of primary education until attaining 18 years of age shall be compulsory.

According to Section 20, Paragraph two and Section 20.<sup>1</sup>, Paragraph one of the General Education Law, pre-primary education is compulsory from the age of five and the pre-primary education programme must be completed by the age of seven. According to Section 32, Paragraph two of the General Education Law, primary education shall be started in the year when the educatee attains seven years of age. However, Paragraph three of the same Section stipulates that an educatee is entitled to start primary education one year earlier or later depending on his or her health condition and psychological preparedness according to the wishes of parents on the basis of an opinion of the family doctor.

Thus, in the Latvian education system, the attainment of a particular level of education is linked to the age of the educatee. Pre-primary education is available from five to seven years of age. It prepares the child for the transition to primary education. Primary education starts consecutively from the age of seven. The legislator has specified the exact moment when the requirement on compulsory primary education, which follows from the third sentence of Article 112 of the Constitution, must be implemented. Compulsory primary education is the minimum standard for the right to education. From the moment a child turns seven, not only it is the obligation of the legislator to take care of and ensure that he or she has access to primary education, but also the child has the obligation to start primary education.

However, there is an exception to these general procedures, and an educatee is entitled to start primary education also from the age of six or eight. The legislator has allowed parents to decide whether their children should start school at the age of six. Hence, the legislator has clarified the scope of parental rights under Articles 110 and 112 of the Constitution.

According to Section 57, Clause 1 of the Education Law, parents have the right to choose the educational institution where the child will receive his or her education. Parental preference for a particular educational institution may vary

depending on such aspects as the closeness of the educational institution to their place of residence, the pedagogical approach of the educational institution, the curricula, the competence of the teachers, the learning environment. This right allows parents to take charge of their child's education, choosing the right environment for their child's development and the right educational institution for their child's needs. Thus, the legislator has also given parents the opportunity to choose which educational institution their child should attend. This way the legislator has also clarified the scope of parental rights under Articles 110 and 112 of the Constitution.

In view of the above, the education system in Latvia is structured in several levels, and assignment to a particular level is related to the age of the educatee. Primary education can be started between the ages of six and eight. At the same time, parents have the right to decide whether their child, being physically and psychologically prepared, will start primary education at the age of six. Primary education is provided in educational institutions that implement a primary education programme, from which parents can choose the one that best suits their child's needs.

**8.2.** The legislator has transferred the competence for determining the specific procedures and arrangements for the implementation of primary education and the respective parental rights to the Cabinet and local governments.

Pursuant to the authorisation contained in Section 4, Clause 18 of the General Education Law to determine the procedures for enrolling educatees in general education programmes, the Cabinet issued Regulation No. 11. In addition, the Cabinet is authorised to determine the procedures for the licensing and accreditation of general education programmes (*see Section 4, Clause 1 of the General Education Law*), to found, reorganise, and liquidate State general education institutions upon a proposal of the Minister for Education and Science (*see Section 4, Clause 2 of the General Education Law*), to determine the State general education standards (*see Section 4, Clause 11 of the General Education Law*), as well as to regulate other matters.

The competences of local governments in the field of education are laid down in Section 17 of the Education Law and Section 4, Paragraph one, Clause 4 of the Local Government Law. Local governments have the obligation to take care of the education of inhabitants, including the provision of compulsory education (*see Section 4, Paragraph one, Clause 4 of the Local Government Law*). They are also granted the competence to found, reorganise, and liquidate general education institutions by agreeing thereupon with the Ministry of Education and Science (*see Section 17, Paragraph three, Clause 1 of the Education Law*). Furthermore, local authorities are granted competence in planning the institutional network of institutions (*cf. Paragraph 17.2 of the judgment of the Constitutional Court of 29 June 2017 in Case No. 2016-23-03*).

The local government of Rīga State city has issued Binding Regulation No. 199. The Regulation prescribes the procedures for the registration and examination of applications for the enrolment of children in Grade 1 of the general education institutions of the local government of Rīga State city that implement the primary education programmes. They also define the division of territorial units attached to the general education institutions of the local government.

It follows from Paragraph 18 of Binding Regulation No. 199 and the contested norm that the list of applicants for Grade 1 of a particular educational institution of the local government of Rīga State city may include both six-year-old and seven-year-old educatees. Thus, in the local government of Rīga State city, educatees of both age groups can move to the primary education level and start their education in Grade 1. However, the contested norm implies a different order in which educatees are granted the possibility to exercise this right in a particular educational institution.

It follows from Paragraph 8 of Binding Regulation No. 199 that a parent may choose and apply a child for enrolment in Grade 1 in several educational institutions and several primary education programmes. According to Paragraph 20 of Binding Regulation No. 199, if an educatee is not included in the list of applicants for Grade 1 of a particular educational institution, his or her parent may

receive information on vacant places in Grade 1 in other educational institutions located in the administrative territory of the local government.

Therefore, the local government of Rīga State city has established the procedures for all educatees who have the right to start primary education to exercise this right. Thus, the local government of Rīga State city gives parents the right to decide whether their child will start primary education at the age of six or seven and in which educational institution he or she will start the education.

**Consequently, the local government of Rīga State city has taken measures to ensure the right of educatees to primary education.**

9. In order to establish whether the measures have been taken properly, i.e. whether the educatees are able to exercise their rights, in the present case it is necessary to assess whether the actions of the local government of Rīga State city comply with the principles of educational opportunity and accessibility.

9.1. As already specified in Paragraph 7.2 of the present judgment, educational opportunity means the provision of a sufficient number of educational institutions and educational programmes to meet the needs of educatees, so as to guarantee effectively the achievement of educational objectives. This principle includes the obligation for the State to ensure that there are enough educational institutions in order to ensure that primary education is accessible and affordable for all educatees and their parents. The legislator has transferred the competence to plan the institutional network of educational institutions to local governments, therefore, in the pending case the Constitutional Court will establish whether there is a sufficient number of educational institutions implementing the primary education programme in the territory of the local government of Rīga State city.

According to the catalogue of the Education, Culture, and Sports Department of the local government of Rīga State city, in 2024, in the local government there will be 25 primary and lower secondary education schools, as well as 58 secondary schools and gymnasiums implementing the first stage of primary education. The reply shows that in most educational institutions, places remain vacant even after inclusion of six-year-old children in the list of applicants

for Grade 1. For example, on 1 September 2020, out of 108 primary education institutions in the local government, 53 educational institutions had vacant places, on 1 September 2021, out of 95 primary education institutions in the local government, 55 educational institutions had vacant places, and on 1 September 2022, out of 95 primary education institutions in the local government, 58 educational institutions had vacant places.

Hence, there are enough educational institutions in the local government of Rīga State city implementing the primary education programme and both six-year-old and seven-year-old educatees are provided with the opportunity to receive primary education.

**9.2.** As stated above in Paragraph 7.2 of the present judgment, access to education must be ensured by creating equal opportunities and eliminating obstacles that could arise in the exercise of educational opportunities. The applicant emphasises that as a result of the contested norm six-year-old educatees are restricted of the right to receive primary education in the educational institution closest to their place of residence.

Access to education means that an educational institution must be physically accessible and must be accessible to all without discrimination (*see UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant on Economic, Social and Cultural Rights), 8 December 1999, E/C.12/1999/10, p. 2*). The report “Education at a Glance 2024” of the Organisation for Economic Co-operation and Development notes that access to an educational institution based on geographical location has traditionally been considered effective (*see OECD Indicators “Education at a Glance 2024”, p. 189. Available at: [oecd-ilibrary.org](https://oecd-ilibrary.org)*).

Section 17, Paragraph one of the Education Law states that each local government has the obligation to ensure that a child has the opportunity to receive primary education at the local government educational institution closest to the place of residence of the child. In the local government of Rīga State city, this provision is implemented taking into account the declared place of residence of the educatee and his or her parent (*e.g. Paragraph 18 of Binding Regulation No. 199*).

In the pending case, different views have been expressed as to the extent to which local governments must fulfil this obligation, i.e. whether it is absolute for all educatees or whether it may be subject to limitations.

As established in Paragraph 7.4 of the present judgment, it does not follow from Articles 110 and 112 of the Constitution that parental preference for a particular educational institution would be granted constitutional protection. The local government does not in every case have to ensure that an educatee is enrolled in Grade 1 at the educational institution chosen by his or her parents. The requirement set by the legislator on the distance of the educational institution from the place of residence of the child is not absolute. Decisions of a local government in relation to the division of educatees between its educational institutions must be based on reasonable considerations as to the location of the educational institution so as to ensure, to the extent possible, that the educatee has access to the educational institution closest to his or her place of residence. In any case, an educatee must be provided with an effective opportunity to complete his or her primary education in a physically safe and reasonably accessible educational institution. Insofar as the geographical location of an educational institution is concerned, parents also have the right to expect the local government to take into account their preference for a particular educational institution where their child will receive primary education.

It follows from the reply of the local government of Rīga State city that in a situation where there are no more places available in Grade 1 of a particular educational institution and it is not possible to enrol the educatee there, the educatee is offered the opportunity to start primary education in another educational institution which, to the extent possible, meets the requirements set out in Section 17, Paragraph one of the Education Law regarding the proximity of the educational institution to the place of residence of the educatee. Thus, in the local government of Rīga State city, educatees are provided with the opportunity to receive primary education in an educational institution that is as close as possible to their place of residence. Since a particular educational institution where an educatee can start Grade 1 is offered on the basis of its geographical location, in cases where this circumstance has been the basis for parental preference, it is

acknowledged that the local government of Rīga State city has ensured effective access to primary education for educatees.

Consequently, the local government of Rīga State city has ensured access to primary education for both six-year-old and seven-year-old educatees.

**Hence, the measures taken by the local government of Rīga State city to ensure the right to primary education have been implemented properly.**

**10.** The Constitutional Court must establish whether, when taking measures to ensure the right to primary education, the general principles of law deriving from the Constitution and other norms of the Constitution, including the principle of legal equality contained in Article 91 of the Constitution, have been complied with.

Article 91 of the Constitution stipulates the following: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.”

The applicant considers that the principle of legal equality has not been complied with in respect of six-year-old and seven-year-old educatees. When enrolling children in Grade 1, priority is given to educatees who turn seven in the relevant calendar year. Six-year-old educatees, although by law they also have the right to start primary education, are only given this opportunity if there are vacant places in the educational institution.

Taking into account the argumentation provided in the application and the materials of the case, in the pending case it is necessary to assess the conformity of the contested norm with the principle of legal equality contained in the first sentence of Article 91 of the Constitution. Accordingly, the legislator is not entitled to adopt such legal regulation which, without a reasonable basis, would allow the differential treatment of persons who are in equal and, according to certain criteria, comparable circumstances, or equal treatment of persons who are in different circumstances (*see Paragraph 12.3 of the judgment of the Constitutional Court of 12 November 2020 in Case No. 2019-33-01*). It is also necessary to assess whether the legislator has taken into account the requirement that the rights and best interests of the child take precedence in legal relations affecting the child and in all

actions concerning the child. The legislator must ensure that the laws and regulations it adopts protect the best interests of the child. Any other recognition of priority without a reasonable basis and justification is not permissible (*cf. Paragraph 23.1 of the judgment of the Constitutional Court of 5 December 2019 in Case No. 2019-01-01*).

**11.** In order to assess whether the contested norm complies with the principle of legal equality, it must be established whether and which persons (groups of persons) are in equal and, according to certain criteria, comparable circumstances.

**11.1.** The applicant points out that the purpose of Section 32, Paragraphs two and three of the General Education Law is to ensure that children have the opportunity to receive education in accordance with their abilities. Thus, children who start primary education in the calendar year in which they turn seven are comparable and in equal circumstances with six-year-old children whose parents consider that their health condition and psychological preparedness allow them to start primary education in the same year.

The local government of Rīga State city points out that seven-year-old children have the obligation to start primary education, while six-year-old children have the right but not the obligation to do so. The content of the rights and obligations of these children is also different and they are not in comparable circumstances. The same views were also expressed by the invited parties.

In order to determine whether and which groups of persons are in comparable circumstances according to certain criteria, it is necessary to establish the main feature that unites these groups. The situation to be compared should be one that shares one or more common features with the situation to be tested. The common feature must unite both situations under one general concept. In addition, it must also be assessed whether there are any relevant considerations indicating that the relevant groups of persons are not in comparable circumstances (*cf. Paragraph 32 of the judgment of the Constitutional Court of 23 May 2022 in case No. 2021-18-01*).

As follows from Paragraph 8.1 of the present judgment, in the Latvian education system, an educatee generally receives pre-primary education from the age of five to seven and prepares for the transition to primary education. The legislator has decided that the age of seven is such stage of development of a child at which he or she is ready to move from pre-primary to primary education. However, there are exceptions to these general procedures, and an educatee is entitled to start primary education already from the age of six according to the wishes of parents. Accordingly, a six-year-old educatee may also be physically and psychologically prepared to move from pre-primary education level to the next level of education, and to continue his or her education in primary education programme according to the wishes of his or her parents.

Thus, educatees in both age groups can exercise their right to primary education when they are physically and psychologically prepared to start Grade 1. The exercise of the right to primary education is the unifying element of the two groups being compared.

**11.2.** The local government of Rīga State city points out that the compulsory age of starting primary education, i.e. seven years, is the decisive criterion which prevents comparison between the above-mentioned groups of persons.

The exception provided for by law that primary education in general must start at the age of seven corresponds to Article 29(1)(a) of the Convention on the Rights of the Child, namely that the State recognises that one of the aims of children's education is the development of the child's personality, talents and mental and physical abilities to their fullest potential. The legislator has also complied with the requirement of Section 11, Paragraph one of the Law on the Protection of the Children's Rights to ensure that all children have equal rights and opportunities to acquire education commensurate to their ability. With this exception, the legislator has provided for the possibility to assess and take into account each specific situation, which may require focusing not only on the age of the child, but also on his or her level of development (*cf. Vandenhole W., Türkelli G. E., Lembrechts S. Children's Rights. A Commentary on the Convention on the*

*Rights of the Child and Its Protocols. Cheltenham: Elgar, 2019, p. 81)* and thus allow him to start Grade 1 a year earlier.

The possibility to differentiate the age of entry to primary education also complies with the principle of the best interests of the child, which is derived from Article 3 of the Convention on the Rights of the Child and Section 6 of the Law on the Protection of the Children's Rights. According to this principle, every child should have the right to healthy development and to an education appropriate to his or her level of physical, mental, spiritual, moral, psychological, and social development (*cf. Vandenhole W., Türkelli G. E., Lembrechts S. Children's Rights. A Commentary on the Convention on the Rights of the Child and Its Protocols. Cheltenham: Elgar, 2019, pp. 94, 292*).

Thus, the legislator's choice of the age of seven as the starting point for primary education is not in itself so categorical as to preclude recognition that six-year-old and seven-year-old educatees are in comparable circumstances. The decisive factor is the decision of the legislator to recognise that the development level of six-year-old children may also be sufficient to entitle them to an education appropriate to their abilities, in particular to entitle them to start the primary education programme. Consequently, in view of the Constitutional Court, the fact that seven years is the age at which it is compulsory to start primary education does not in itself mean that educatees who have reached that age are not in comparable circumstances with six-year-old educatees.

**Hence, seven-year-old educatees and six-year-old educatees who are entitled to start primary education are in equal and, according to certain criteria, comparable circumstances.**

**12.** The Constitutional Court must establish whether the contested norm provides for the differential treatment of persons who are in equal and, according to certain criteria, comparable circumstances, namely seven-year-old educatees and six-year-old educatees who are entitled to start primary education.

According to the applicant, the differential treatment is manifested in the fact that educatees who turn seven in the relevant calendar year are enrolled in

Grade 1 of the local government educational institution selected by their parents in priority order compared to educatees who, according to wishes of their parents, start primary education at the age of six and are enrolled in the selected educational institution only if there are vacant places there. The local government of Rīga State city and the invited parties, on the other hand, consider that in the pending case the differential treatment of the abovementioned groups of persons cannot be established.

According to Paragraph 18 of Binding Regulation No. 199 and the contested norm, the inclusion of seven-year-old educatees in the list of applicants for Grade 1 of an educational institution is ensured first and only then, if there are vacant places in the institution, a decision is made on the enrolment of six-year-old educatees. In other words, six-year-old educatees are placed last on the list of applicants for Grade 1 of a particular educational institution, or not at all if there are no vacant places. So this group of persons is subject to the differential treatment.

**Consequently, the contested norm causes the differential treatment of persons who are in equal and, according to certain criteria, comparable circumstances, namely seven-year-old educatees and six-year-old educatees who are also entitled to start primary education.**

**13.** Upon concluding that the contested norm provides for the differential treatment of groups of persons who are in equal and, according to certain criteria, comparable circumstances, the Constitutional Court must assess whether such treatment has been established by a legal norm adopted in accordance with the procedures established by laws and regulations and in conformity with Article 64 of the Constitution.

Article 64 of the Constitution stipulates the following: “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution.”

As recognised by the Constitutional Court, in order to ensure effective exercise of the public authority, a deviation from the requirement that the legislator must decide all matters entirely itself is admissible. This efficiency is achieved by

the legislator deciding on the most important matters in the legislative process, while authorising the executive authority, i.e. the Cabinet, to elaborate more detailed regulations and technical norms necessary for the implementation of the law (*see Paragraph 21 of the judgment of the Constitutional Court of 14 October 2021 in Case No. 2021-03-03*). A local government is a local authority established by the citizens living in the relevant territory and operating in the relevant territory. It denotes the right and the ability of local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (*cf. Paragraph 14 of the decision on termination of proceedings of 16 April 2008 in Case No. 2007-21-01*). Thus, certain executive powers are entrusted also to local governments.

According to the principle of separation of powers, the executive authority has the right to issue a generally binding (external) regulatory enactment only in the case specified by law and it must not be contrary to the Constitution and laws (*cf. Paragraph 21 of the judgment of the Constitutional Court of 14 October 2021 in Case No. 2021-03-03*). It must also be published in the manner prescribed by the laws and regulations and be sufficiently clear to enable the addressee to understand his or her rights and obligations (*cf. Concluding Part of the judgment of the Constitutional Court of 20 May 2002 in Case No. 2002-01-03 and Paragraph 20 of the judgment of the Constitutional Court of 2 March 2016 in Case No. 2015-11-03*).

Binding Regulation No. 199 is issued on the basis of Section 4, Paragraph one, Clause 4 and Section 44, Paragraph two of the Local Government Law. The Regulation was published on 10 May 2023 in the official gazette *Latvijas Vēstnesis* No. 88 and entered into force on 11 May 2023. The parties to the case have not raised any objections and also the Constitutional Court has no doubts that the contested norm is available in accordance with the requirements of laws and regulations and is sufficiently clearly formulated.

The applicant considers that the Cabinet has the authority to determine the procedures for the enrolment of children in local government primary education institutions in accordance with Section 4, Clause 18 of the General Education Law,

and by adopting the contested norm the local government has violated the authority granted in Section 4, Paragraph one, Clause 4 of the Local Government Law and Section 17, Paragraph one of the Education Law. In its reply, the local government of Rīga State city points out that Section 4, Paragraph one, Clause 4 of the Local Government Law and Section 17 of the Education Law in conjunction with Section 44, Paragraph two of the Local Government Law empower the local government council to determine in binding regulations the principles for the enrolment of educatees in local government primary education institutions, including to determine priority criteria on the basis of which an educational institution may refuse to enrol an educatee in the general education programme.

**13.1.** The legislator may transfer to local governments the competence to decide on matters that can be effectively resolved by knowing the conditions of the administrative territory and the needs of the inhabitants. Moreover, not only by specifically authorising the local government in the relevant regulatory enactment, but also by generally establishing it as an autonomous competence of the local government. The autonomous functions of local governments are specified in Section 4 of the Local Government Law. The local government itself is responsible for the performance of autonomous functions. In order to ensure the performance of autonomous functions, Section 44, Paragraph two of the Local Government Law provides for the right of the local government council to issue generally binding (external) regulatory enactments, i.e. binding regulations. According to this legal norm, binding regulations shall be issued by the local government council in compliance with the procedures for the performance of the functions provided for by law or by Cabinet regulations.

The contested norm is issued on the basis of Section 4, Paragraph one, Clause 4 and Section 44, Paragraph two of the Local Government Law. Section 4, Paragraph one, Clause 4 of the Local Government Law provides that one of the autonomous functions of a local government is to take care of the education of inhabitants, including the provision of compulsory education. Section 44, Paragraph two of this Law, as already mentioned above, establishes the right of the council to issue binding regulations. Hence, it can be concluded that the

aforementioned provisions of the Local Government Law provide for taking care of the education of inhabitants of a local government as an autonomous function of the respective local government and for the provision thereof they also establish the right of the local government to issue binding regulations.

Consequently, it should be assessed whether the local government of Rīga State city, by issuing the contested norm, has complied with the procedures for the performance of the autonomous function of the local government provided for by law or by Cabinet regulations.

**13.2.** According to Section 4, Clause 18 of the General Education Law, the Cabinet shall determine the procedures for enrolling educatees in general education programmes and discharging from them, as well as the mandatory requirements for moving educatees up into the next grade in such programmes. The Cabinet has issued Regulation No. 11 in accordance with this authorisation. This Regulation governs the general procedures for the enrolment of educatees in general education programmes, i.e. what document can serve as basis for the enrolment of an educatee in an education programme, the content of such document, parental rights to get acquainted with the documents drawn up by the educational institution and regulating its activities, the actions of the head of the educational institution after receiving an application and the type of decision to be taken, the procedures for the enrolment of orphans and educatees left without parental care, as well as the procedures for learning primary education programmes in family.

Regulation No. 11 does not govern the procedures for the examination of applications for the enrolment of educatees in Grade 1 and the division of educatees among the local government educational institutions. This is also confirmed by the Cabinet, i.e. the invited party. The legislator has not granted such authorisation to the Cabinet.

**13.3.** It is local governments that can respond effectively and proactively to changes in the size and composition of their populations. Therefore, the legislator has also delegated the local governments to resolve matters related to the education system that require a timely and effective response by local governments.

The competence of a local government to plan the institutional network of its educational institutions also covers decision-making in matters related to the number of educatees in classes and how to fill vacant places. The local government of Rīga State city has the obligation to determine the order in which educatees are enrolled in Grade 1 at its educational institutions. The contested norm is a part of the regulation which establishes how applications for the enrolment of an educatee in Grade 1 of an educational institution shall be registered and in what order they shall be examined. This also regulates how to fill vacant places in Grade 1 of local government educational institutions. The regulation establishing the division of educatees among educational institutions of the local government of Rīga State city is part of a set of measures necessary to ensure that educatees have the opportunity to start primary education. Thus, the contested norm has been issued in the exercise of the autonomous function assigned to the local government of Rīga State city.

In exercising its autonomous function to take care of the education of inhabitants, a local government must take into account both the age at which primary education should be started according to Section 32, Paragraphs two and three of the General Education Law, and the obligation to ensure, to the extent possible, that educatees have the opportunity to receive primary education in the educational institution closest to their place of residence according to Section 17, Paragraph one of the Education Law. In addition, the local government must take into account the number of educational institutions in its territory, the capacity of the available premises, the number of teachers, and balance the right of all educatees to primary education. The local government must coordinate the division of educatees among its educational institutions.

Thus, the local government of Rīga State city has complied with the authorisation granted to it.

**Consequently, the differential treatment is established by a legal norm adopted in accordance with the procedures laid down in laws and regulations and conforms to Article 64 of the Constitution.**

14. There are objective and reasonable grounds for the differential treatment if there is a legitimate objective and the principle of proportionality has been complied with. It must therefore be further assessed whether such differential treatment has a legitimate objective.

According to the local government of Rīga State city, the legitimate objective of the differential treatment is the protection of the rights of others, as it is established in order to ensure the right of seven-year-old educatees to receive primary education. The applicant, on the other hand, for the same reason, considers that the legitimate objective of the differential treatment is the protection of the welfare of society.

The local government of Rīga State city notes that due to objective circumstances, situations may arise when it is not possible to enrol all the children applied for Grade 1 in a particular educational institution. Several educational institutions have so many declared children in their attached territorial units that the educational institution cannot accommodate them all because the number of applicants exceeds the number of places available.

The availability of premises, the number of teachers, the workload, and the ability to give every child the attention they deserve are not inexhaustible. The local government must plan and organise its resources and those of its teaching staff in such a way as to ensure safe circumstances for life and health of the educatee at an educational institution, and the protection of belongings of the educatee at the educational institution and the organised events thereof (*see Section 55, Clauses 7 and 8 of the Education Law*), as well as to comply with hygiene requirements (*see Cabinet Regulation No. 610 of 27 December 2002, Hygiene Requirements for Educational Institutions Implementing the General Basic Education, General Secondary Education, Vocational Basic Education, Industrial Education, or Vocational Secondary Education Programmes*).

Thus, the number of educational institutions in some territorial units or parts of the local government of Rīga State city may not be sufficient to include all those who have expressed a wish to be enrolled in Grade 1. In such circumstances, it is reasonable to expect that the local government will organise primary education in

accordance with the resources available to it. This may include the decision of the local government to give preference to educatees who have reached the age of compulsory primary education.

In the pending case, there is no dispute that the differential treatment was established in order to ensure that educatees of the age of compulsory primary education, i.e. seven-year-old children, are primarily enrolled in Grade 1 of the educational institution. The abovementioned corresponds to the legitimate objective, i.e. the protection of the rights of others.

**Thus, the legitimate objective of the differential treatment caused by the contested norm is the protection of the rights of others.**

**15.** When assessing whether the differential treatment complies with the principle of proportionality, the discretion of the legislator, including local governments, in establishing the education system and ensuring the right to education should be taken into account.

The applicant points out that the differential treatment is not an appropriate means for achieving the legitimate objective, since the local government must in any case ensure that all educatees are enrolled in its educational institutions. Such treatment is not necessary, as six-year-old educatees do not compete with seven-year-old educatees due to the fact that their birth data, and therefore the order of registration, is different. The applicant considers that the differential treatment does not benefit society.

The local government of Rīga State city, on the other hand, argues that the restriction is proportionate, as six-year-old educatees are not restricted of the right to primary education. The local government ensures this right within reasonable limits. In addition, the local government notes the following: arguments of the applicant that six-year-old educatees do not compete with seven-year-old educatees are unfounded.

It derives from the case law of the European Court of Human Rights that the right to education needs a framework that requires the State to make the necessary choices. The State has discretion in making these choices (*see Paragraph 5 of the*

*judgment of the European Court of Human Rights of 23 July 1968 in the case “relating to certain aspects of the laws on the use of languages in education in Belgium” and Paragraph 154 of the Grand Chamber judgment of 10 November 2005 in the case “Leyla Şahin v. Turkey”*). The exercise of the discretion granted to the State may affect parental rights to decide on the education of their child, and the extent to which these rights may be exercised may vary depending on the public interest to be served in a particular case.

**15.1.** Upon determining the age (seven years) at which primary education becomes compulsory for educatees, the legislator has based itself on the opinions of doctors, parents of children, specialists in the field, and authorities (*cf. Development documents of draft law No. 1205/Lp12 “Amendments to the General Education Law”*. Available at: *saeima.lv*). Thus, the legislator has taken into account the public interest in ensuring, as a priority, the possibility of starting primary education for seven-year-old educatees. As the number of vacant places in Grade 1 of the educational institutions located in the local government of Rīga State city is limited, the condition that the list of applicants for Grade 1 should include in priority order those educatees who have the obligation to start primary education in the relevant calendar year is in the public interest.

The applicant considers that since six-year-old educatees do not compete with seven-year-old educatees, it would be possible to establish the procedures whereby educatees are included in the list of applicants in the order of submission of applications by parents, irrespective of the age of the educatees. The Constitutional Court notes that it would not be possible to ensure the aforementioned public interest by establishing such procedures. The fact that Paragraph 7 of Binding Regulation No. 199 provides for the possibility of enrolling a child in an educational institution when he or she reaches the age of five does not mean that all parents will make use of this possibility in the relevant year. Moreover, this provision does not require every parent to take the opportunity to enrol a child in an educational institution from the day the child turns five. There could arise different circumstances in each family and, for example, the change of the place of residence can delay submission of the application.

**15.2.** The local government should plan the network of educational institutions providing primary education in such a way that the right to accessible education of six-year-old children and their parents is effectively ensured, i.e. that parents of six-year-old children can choose an educational institution that best meets their and their children's needs, e.g. the educational institution closest to their place of residence. The choice may also depend on the pedagogical approach, curricula, teacher competences, and learning environment of a particular educational institution.

It has already been pointed out in Paragraph 9.1 of the present judgment that in most of the educational institutions of the local government of Rīga State city, vacant places remain even after including six-year-old educatees in the list of applicants for Grade 1. Thus, six-year-old educatees are in most cases enrolled in Grade 1 and can start exercising their right to primary education.

If an educatee is not included in the list of applicants for Grade 1 of an educational institution, then, in accordance with Paragraph 20 of Binding Regulation No. 199, his or her parents may receive information on vacant places in Grade 1 in other educational institutions located in the administrative territory of the local government. The requirement to provide such information to parents is also contained in the second sentence of Paragraph 11 of Regulation No. 11.

Paragraph 9.2 of the present judgment already establishes that an educatee who cannot be enrolled in Grade 1 of a particular educational institution is offered the possibility to start his or her primary education in another reasonably close educational institution, which to the extent possible meets the requirements laid down in Section 17, Paragraph one of the Education Law regarding the proximity of the educational institution to the place of residence of the educatee. The local government of Rīga State city points out that the wishes of the educatee and his or her parents regarding the orientation of the educational programme are also respected.

Moreover, six years is not the age at which a child is subject to the compulsory requirement to start primary education. Parents who want their child to attend a particular educational institution where there is high competition for

Grade 1 can decide that their child continues the pre-primary education programme until the age of seven. Accordingly, the child will be eligible for a vacant place in Grade 1 of the educational institution chosen by the parents when he or she reaches the age of compulsory primary education, i.e. in the school year in which the educational institution prioritises seven-year-old educatees on the list of applicants for Grade 1.

The principle of proportionality is therefore complied with when establishing differential treatment between six-year-old and seven-year-old educatees.

**Consequently, the contested norm conforms to the first sentence of Article 91 of the Constitution.**

**In view of the above, it is recognised that the contested norm conforms to Article 64, the first sentence of Article 91, Article 110, and Article 112 of the Constitution.**

### **Substantive Part**

Pursuant to Sections 30 to 32 of the Constitutional Court Law, the Constitutional Court

**decided as follows:**

**It is recognised that Paragraph 19 of Rīga City Council Binding Regulation No. RD-23-199-sn of 26 April 2023, Procedures for the Registration and Examination of Applications for the Enrolment of Children in Grade 1 in the Educational Institutions of the Local Government of Rīga State City, conforms to Article 64, the first sentence of Article 91, Article 110, and Article 112 of the Constitution.**

The judgement is final and not subject to appeal.

The judgement shall enter into force as of the date of its publication.

Chairperson of the court hearing

Irēna Kucina