



CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

on Behalf of the Republic of Latvia

in Riga on 10 July 2024

in Case No. 2022-45-01

The Constitutional Court, comprised of: chairperson of the court hearing Aldis Laviņš, Judges Irēna Kucina, Gunārs Kusiņš, Jānis Neimanis, Artūrs Kučs, Anita Rodiņa, and Jautrīte Briede,

with the participation of Tengizs Džibuti, the legal representative of applicants Dana Džibuti and Dominiks Džibuti, and representative Inese Nikuļceva, a sworn advocate,

Sandis Bērtaitis, a sworn advocate, authorised representative of the *Saeima*, the institution, which issued the contested act,

Paula Marta Daugavvanaga-Vanaga and Alise Ziemele as the secretaries of the court hearing,

on the basis of Article 85 of the Constitution of the Republic of Latvia and Para 1 of Section 16, Para 11 of Section 17 (1), as well as Section 19² and Section 28 of Constitutional Court Law,

on 19 March, 5, 10, 12, 16 April, 6 June and 11 June reviewed at an open court hearing the case

“On Compliance of Section 9 (1¹), Sub-para 1 of Para 102 of Transitional Provisions of Education Law and of Sections 1, 5 and 6 of the Law of 29 September 2022 “Amendments to Education Law” with Article 1, the First Sentence of Article 112, and Article 114 of the Constitution of the Republic of Latvia”.

The Facts

1. Education Law was adopted on 29 October 1998.

On 16 April 2018, amendments of 22 March 2018 to Education Law entered into effect (hereafter – Amendments of 2018), which added Part 1¹ to Section 9 of the law, worded as follows: “In private educational institutions general education and vocational education at the level of basic education and secondary education shall be acquired in the official language”,

whereas the second part of this Section was expressed as follows:

“Education may be acquired in another language:

1) in educational institutions which are implementing educational programmes according to the bilateral or multilateral international agreements of the Republic of Latvia;

2) in educational institutions implementing minority education programmes at the pre-school education and basic education levels, subject to the provisions of Section 41 of this Law;

2¹) in educational institutions in which study subjects of general education programmes are completely or partially implemented in a foreign language in order to ensure the learning of other official languages of the European Union in conformity with the conditions of the relevant State education standard;

3) in educational institutions specified in other laws.”

Section 41 of Education Law, “Educational Programmes for Ethnic Minorities”, provided:

(1) Educational programmes for ethnic minorities shall be developed by an educational institution selecting any of the model educational programmes included in the guidelines for the State pre-school education or State basic education standard.

(1¹) From Grades 1 to 6 in educational programmes for ethnic minorities, the acquisition of the curriculum in the official language shall be ensured in the amount of not less than 50 percent of the total lesson load in an academic year, including foreign languages.

(1²) From Grades 7 to 9 in educational programmes for ethnic minorities, the acquisition of the curriculum in the official language shall be ensured in the amount of not less than 80 percent of the total lesson load in an academic year, including foreign languages.

(2) Educational programmes for ethnic minorities shall additionally include the curriculum necessary for the acquisition of the relevant ethnic culture and integration of ethnic minorities in Latvia.”

By Section 1 of the law of 29 September 2022 “Amendments to Education Law” (hereafter also – Amendments of 2022), which entered into effect on 25 October 2022, Para 2 of Section 9 (2) was deleted from Education Law. Likewise, by Section 5 of Amendments of 2022, Para 1 was deleted from Section 38 (2) of Education Law, which previously envisaged educational programmes for ethnic minorities as a special type of educational programmes, whereas Section 6 of these Amendments deleted Section 41 from Education Law.

Sub-para 1 of Para 102 of the Transitional Provisions of Education Law, introduced by Amendments of 2022, provides:

“The amendments that envisage deleting Section 41 of this Law shall enter into force on 1 September 2023 – with respect to the implementation of the pre-school education programme and the general basic education programme in Grades 1, 4 and 7.”

Namely, by Sections 1, 5 and 6 of Amendments of 2022, all provisions that envisaged and regulated acquisition of general education in educational programmes for ethnic minorities were deleted from Education Law. After Amendments of 2022 entered into effect, the curriculum of general education in educational institutions of Latvia, *inter alia*, in private educational institutions, must be acquired in the official language.

2. The applicants – Dana and Dominiks Džibuti (hereafter also – the Applicants) – hold that Section 9 (1¹), Sub-para 1 of Para 102 of Transitional Provisions of Education Law and of Sections 1, 5 and 6 of Amendments of 2022 (hereafter – the contested provisions) are incompatible with the principle of

legitimate expectations, included in Article 1 of the Constitution of the Republic of Latvia (hereafter – the Constitution), the right to education, included in the first sentence of Article 112 of the Constitution, as well as with the right of persons belonging to ethnic minorities to acquire, preserve and develop their language, ethnic and cultural singularity.

The applicants are educatees who self-identify as ethnic minorities, living in Latvia. At the time of submitting the application, they were studying in private educational institutions in education programmes for ethnic minorities at the levels of pre-school education and basic education.

Dana Džibuti has acquired basic education, in accordance with Section 43 (1¹) of Education Law, which was previously in effect, acquiring approximately 50 percent the curriculum in Latvian and approximately 50 percent of the curriculum in the language of an ethnic minority (Russian). If the contested provisions had not been adopted, in accordance with the previous regulation, from 1 September 2023, from Grade 7 to Grade 9, she would have had to acquire 80 percent of the curriculum in the official language and the remaining 20 percent of the curriculum in Russian.

Para 18¹ of Section 14 of Education Law, as well as the Cabinet Regulation of 21 November 2018 No. 716 “Regulations Regarding the State Guidelines for Pre-school Education and the Model Pre-school Education Programmes” (hereafter – Guidelines for Pre-school Education) applied to Dominiks Džibuti, envisaging that the bilingual approach was used in the entire stage of pre-school education, using the Latvian language in communication, but for children from the age of five Latvian was the main means of communication during play lessons, except targeted activities organised for the acquisition of the language of the ethnic minority and ethnic culture. Due to the contested provisions, already from 1 September 2023, pre-school education had been ensured to Dominiks Džibuti only in the official language.

At the time when the application was submitted, Dominiks Džibuti had been only two years old, therefore he had not been fully proficient in speaking in his native language – Russian.

2.1. The Applicants hold that the principle of good legislative procedure had not been complied with in the course of adopting the contested provisions.

Allegedly, the initial impact assessment report (annotation) on Amendments of 2022 did not analyse separately the situation in private institutions of general education but equated them to the State and local government educational institutions. Contrary to what has been stated in the Constitutional Court's judgement of 13 November 2019 in case No. 2018-22-01 (hereafter – Judgement in Case No. 2018-22-01), the legislator had not assessed whether balance was found between the aim to improve the acquisition of the official language and protection of the rights of ethnic minorities in the process of general education in private educational institutions and whether at least minimum rights had been retained for an educatee, belonging to an ethnic minority, to use the language of ethnic minority with the aim of safeguarding one's ethnic singularity, culture and traditions. Likewise, the *Saeima* had not assessed whether the requirement to use only the official language would not deteriorate the quality of education and whether, as the result, it, substantially, become inaccessible for a part of educatees. Also, the reform to the language of instruction of 2018 has not been evaluated comprehensively.

The *Saeima* had failed to take into account the opinion provided by the European Commissions for Democracy through Law (hereafter also – the Venice Commission), the Resolution by the Committee of Ministers of the Council of Europe of 3 March 2021 On the Implementation of the Framework Convention for the Protection of National Minorities by Latvia and Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights on the Second Periodic Report of Latvia of 30 March 2021. The Venice Commission had underscored, *inter alia*, the decisive importance of the first years in education for a child's development and, therefore, in an ideal case, that, throughout the entire stage of pre-school education learning should take place in the child's native language.

Likewise, the *Saeima* had not aligned the legal provisions, included in draft law No. 1519/Lp13 “Amendments to Education Law” (hereafter also –

draft law “Amendments to Education Law”) with the legal provisions already existing within the legal system.

The Applicants’ legal representative, i.e., their father, had not received explanation why it would be impossible not to apply the contested provisions to private educational institutions.

2.2. Although the legitimate aim of the contested provisions, insofar they apply exactly to private educational institutions, has not been stated in the annotation to the draft law “Amendments to Education Law”, the restriction on fundamental rights in general is said to be linked to protection of the official language.

The Applicants refer to the statements made in the Constitutional Court’s judgments that, in general, such a restriction on fundamental rights is suitable for reaching the legitimate aims, however, are of the opinion that, by determining that education can be acquired only in the official language, in particular, with respect to children of pre-school age, the acquisition of the official language and the general development of a child could be hindered rather than facilitated.

Allegedly, private educational institutions are able to ensure that outcome that complies with certain requirements is reached, *inter alia*, also that the educatees have acquired the official language on the highest level, which is proven by the tests and examinations taken in these institutions, just as in State and local government educational institutions. Latvia is said to support numerous other exceptions from the rule that the general education must be acquired in the official language, therefore, no reason can be discerned why the process of education in private educational institutions could not be implemented in the language of an ethnic minority if, at the same time, acquisition of the Latvian language and taking of the State examinations were ensured.

Allegedly, the possibility to acquire the language of ethnic minority and history of culture in the form of interest-related education is not an alternative for acquiring the general education in the language of an ethnic minority. The interest-related education is said to be fragmented, voluntary and does not include mandatory pedagogical support. The Applicants also doubt whether local

governments will delegate the implementation of such interest-related educational programmes to private educational institutions.

2.3. It is maintained that the benefit that society gains from the restriction on fundamental rights, included in the contested provisions, does not outweigh the damage inflicted upon an individual's rights and lawful interests.

The requirement to acquire education in private educational institutions of ethnic minorities only in the official language, substantially, deprive of the right, included in Article 114 of the Constitution and Article 13 of the Council of Europe Framework Convention for the Protection of National Minorities (hereafter – the Convention on Minorities) to acquire general education in the languages of national minorities.

If the requirement regarding the acquisition of pre-school education only in the official language is strictly adhered to, it could be harmful for a child's intellectual development, *inter alia*, leading to a rudimentary level of native language acquisition.

Hence, allegedly, the contested provisions are incompatible with the first sentence of Article 112 of the Constitution and Article 114 of the Constitution.

2.4. It is maintained that the contested provisions violate also the principle of legitimate expectations, included in Article 1 of the Constitution.

The Applicants had expected that Amendments of 2018 would be the last reform with respect to the use of the official language in schools of ethnic minorities. Such expectations had been based on the Constitutional Court's findings, included in the Judgement in case No. 2018-22-01, as well as the opinions of summoned persons in this case and the ones reflected in the Constitutional Court's judgement of 23 April 2019 in Case No. 2018-12-01.

The annotation to the draft law "Amendments to Education Law" does not point to new arguments substantiating one more language use reform. The transitional period that is less than one year long is said to be disproportionately short. Within a period so short, private educational institutions cannot reorient themselves, elaborate new educational programmes, prepare and ensure new study aids and, possibly, replace part of the teachers.

The Applicants holds that, currently, threat to or decrease in the use of the official language cannot be found. Quite on the contrary, the position of the official language is becoming ever more stronger, and the number of persons who reside permanently in Latvia but have not mastered the official language is diminishing. Therefore, there are no grounds to consider that the representatives of the title nation would be interested in ensuring urgently that only the official language would be used in the learning processes at all levels of private education, including pre-school education.

2.5. In their additional explanations, the Applicants underscore that the contested provisions cause an infringement on the fundamental rights, included in the first sentence of Article 112 and Article 114 of the Constitution, irrespective of the quality of education.

In its judgement of 16 November 2023 in case “Džibuti and Others v. Latvia”, the European Court of Human Rights had recognised that the Constitution provided a higher level of guarantees for the ethnic minorities’ right to education in private schools than the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention).

The Applicants do not uphold the opinion, expressed in the *Saeima’s* written reply, that “Article 112 of the Constitution neither separately nor in conjunction with Article 114 imposes upon the State the obligation to ensure to children belonging to ethnic minorities the possibility, during the period of acquiring their education, to learn in the language of the ethnic minority”. This opinion is said to be clearly contradictory to the conclusion reached by the Constitutional Court in its judgement in case No. 2018-22-01 that “the contested provision restricts a person’s fundamental rights that follow from the first sentence of Article 112 of the Constitution in conjunction with Article 114 of the Constitution”.

The Advisory Committee of the Convention on Minorities (hereafter – the Advisory Committee), in Para 145 of the Fourth Opinion on Latvia, has concluded that the restriction constitute a clear violation of Article 13 of the Convention on Minorities, as it does not allow reaching the main purpose of

setting up such schools, namely, the provision of education in the respective minority language.

Allegedly, the contested provisions had been adopted without assessing the sufficiency of teachers and support staff, other risks, and possible adverse consequences. Likewise, the educational programme had not been tested and approved following the adoption of the contested provisions. Currently, within the process of education, difficulties are caused by, *inter alia*, the shortage of qualified teachers and support staff; prohibition for the teachers and support staff to use a minority language; prohibition to use bilingual study aids and study aids in a minority language; prohibition for the educatee to present their achievements in their own language, and the need to use a dictionary in every lesson. In practice, an educatee's right to receive individualised and personalised support in the acquisition of the official language is ensured only in the official language and, thus, it is not ensured effectively. Without translation into a minority language, the explanation is said to be incomprehensible.

At the private educational institution "LATREIA" Dana Džibuti is using the opportunity to master interest-related educational programme, which is paid for by the resources of the educatees' families. No information is available about interest-related educational programme, organised by the local government.

2.6. At the court hearing, the Applicants stated that their grandfather had been a Russian, therefore they self-identify as the Russian minority. Children's native language is said to be the basis for successive mastering of other study subjects and other languages. It follows from the statements made by several summoned persons that there is no State-developed methodology that is needed to teach the official language to educatees who have not mastered it before.

It is maintained that the educatees who are learning in languages of the European Union, in accordance with international agreements, and the minority educatees, whose native languages are not the languages of the European Union, are in similar and according to certain criteria comparable circumstances, therefore they should be treated equally. The contested provisions are said to apply not only to the Russian language but also to, for example, the Romani language.

At the private institution of pre-school education “GALAKTIKA”, where Dominiks is receiving pre-school education, the interest-related minority educational programme is ensured in the amount of three play lessons per week. Allegedly, this interest-related minority educational programme is provided at the educational institution after the basic programme when children are already tired and, allegedly, is insufficient for mastering the native language.

Of the education, offered by the State and private educational institutions is absolutely identical, then the private educational institutions are said to be meaningless. Sub-para “c” of the first part of Article 5 of Convention against Discrimination in Education envisages the right of representatives of ethnic minorities to carry out their own educational activities, which include the maintenance of schools, the use or the teaching in this language.

Private educational institutions are not represented on the Advisory Council of the Ministry of Education and Science (hereafter – the Advisory Council). In the process of adopting the contested provisions, Article 13 of the Convention on Minorities and the Constitutional Court’s judgement of 19 June 2020 in case No. 2019-20-03 (hereafter– Judgement in case No. 2019-20-03) had not been examined. There is not clear substantiation as to why children below the age of five, in the first stage of pre-school education, are prohibited from using the language of an ethnic minority if until this age the requirement of education is not mandatory and the State does not envisage issuing diplomas for this stage of education.

The rights of children and their parents are also said to follow from Article 13 of the Convention on Minorities.

Allegedly, the present case is not about the fact that children, belonging to ethnic minorities, have to master the official language but about the fact that education should include the possibility to master the language of an ethnic minority in a way that would not interfere in any way with the mastering of the official language. Allegedly, the Latvian constitutional identity comprises also respect for national minorities and children’s rights.

The possibility to master the language of an ethnic minority should be included in formal education. Quality education allows mastering in full all subjects and maintaining one's national identity.

Application of the Convention on Minorities cannot depend on the international situation, i.e., Russia's aggression against Ukraine. Latvia has not derogated from the commitments that are set out in Article 13 of the Convention on Minorities. The political situation may not prohibit educatees in private educational institutions from acquiring education in the language of an ethnic minority.

On 3 June 2024, the Supreme Court of Estonia has delivered a ruling, pointing out that the State is not obliged to ensure education in public schools in any foreign language but also noting that the State does not interfere in the choice of the language of instruction by the private educational institutions and it is the freedom of the ethnic minority, which the State may not restrict without grounds.

The conclusion that the interest-related education of ethnic minorities cannot ensure the development of a child's national identity is said to apply, in particular, to educatees below the age of four because interest-related education is incompatible with the development level of the educatees, their ability to keep attention and the admissible load. Since, previously, education had been bilingual, also other subjects, not merely the language and literature, had been acquired in the language of an ethnic minority. Hence, the three hours per week, allocated to interest-related education of ethnic minorities, is said to be an incomparable number.

A kindergarten operates in Daugavpils where, in accordance with an international agreement, Polish is acquired as part of the basic programme. If the acquisition of pre-school education partly in Polish and partly in the official language is beneficial for a child's development then, taking into account the equality principle, the same should be applied to those educatees whose native language is the language of another ethnic minority.

Transition to education in the official language should have been more scientific, better researched and slower, taking into account the possible exemptions, individual support mechanisms, as well as the interests of children

with special needs. Degradation of the culture of ethnic minorities is said to be leading to marginalisation and, thus, to exclusion and security risks.

3. The institution, which issued the contested act, – the Saeima – holds that the contested provisions comply with Article 1, the first sentence of Article 112 and Article 114 of the Constitution.

3.1. The contested provisions and the legal regulation related to them in Amendments of 2022 and the law of 29 September 2022 “Amendments to General Education Law” are said to continue the reform to the language of instruction, which has lasted for more than 20 years, – transition to the official language as the language of instruction – and is causally linked to Latvia’s historical situation. The circumstances that characterise Latvia’s society, the current geopolitical trends and other current events, *inter alia*, the disinformation activities deployed in the information space in the Russian language are said to be essential in this case.

It has been established in the study “The Linguistic Situation in Latvia: 2016–2020”, conducted by the Latvian Language Agency (hereafter – the Agency), that, in 2019, 20 percent of adolescents, belonging to ethnic minorities, had admitted that they had acquired the Latvian language only on the level of basic proficiency or had poor knowledge of it. It is stated in the Guidelines for the Official Language Policy for 2021-2027 that, in 2019, persons belonging to ethnic minorities had used the Latvian language in public environment in 39 percent of situations, whereas in communicating with strangers on the street – in 50 percent of the situations. Insufficient use of the Latvian language is still found. Moreover, separation between the information spaces in the Latvian and the Russian languages does not promote social cohesion and protection of the democratic state order.

The official language policy is said to be linked to the protection of Latvia’s democratic order also in another perspective. The persons who, lacking proficiency in the language have access only to the information space in Russian, are subject to the influence of this information space. This is said to be of particular importance since the beginning of 2022 due to the war that Russia is

waging against Ukraine and disinformation activities spread in the information space in Russian.

3.2. Even before submitting “Amendments to Education Law” to the *Saeima*, social partners, representatives of the sector and parents of educatees had been heard at the sitting of the Advisory Council. Meetings between the Minister for Education and Science and representatives of the educational institutions of ethnic minorities had been organised. After the draft law had been adopted in the first reading, it had been discussed at six sittings of the *Saeima* Education, Culture and Science Committee.

In view of the above, the *Saeima* has no doubts that the contested provisions had been duly discussed and that, in the legislative process, the opinions of all stakeholders had been identified, to the extent possible.

The opinions of international organisations regarding the use of language in the educational process are only recommendatory by nature. These opinions are often general and, hence, cannot be applied equally to all countries, *inter alia*, Latvia, and its special situation.

Hence, the *Saeima* holds that the legislator, complying with the principle of good legislative procedure, has assessed the compliance of legal provisions with superior legal provisions, as well as aligned the legal provisions, set out in the draft law “Amendments to Education Law”, with the legal provisions already existing with the legal system.

3.3. The task of education is to ensure that a child has such a level of proficiency in the Latvian language to be able to participate fully in social life and involvement in democratic processes.

Allegedly, the second sentence in Article 2 of First Protocol to the Convention does not impose an obligation upon the State the obligation to guarantee to parents the right to choose the language of instruction for their children. It guarantees the right to use all possibilities provided by the system of education, already existing in the State. The European Court of Human Rights has recognised that the right to education, substantially, requires State’s regulation. Likewise, a person’s subjective right to general education in the language of an ethnic minority does not follow from International Covenant on

Economic, Social and Cultural Rights. Thus, the right to education is said to allow a certain discretion of the State, taking into account the resources available to it, as well as society's needs in its particular stage of development.

Since Article 112 of the Constitution, either alone, or in conjunction with Article 114, does not impose upon the State to ensure to children of ethnic minorities, in the period of acquiring education, the possibility to study only in the language of the ethnic minority, the *Saeima* is assessing the Applicants' arguments to the extent that they apply to the right to acquire education in the official language that complies with the aims of education, i.e., quality education.

At the time of submitting the written reply, it is impossible to establish whether the contested provisions will impact the possibilities to acquire quality education for persons belonging to ethnic minorities. Nevertheless, private institutions, just like State and local government educational institutions, belong to the same united area of general education. Thus, the State has the right to regulate the process of education in private educational institutions, to the same extent as in State and local government institutions. Hence, the legislator was not obliged to assess separately the need for the contested provisions and their impact on private educational institutions.

The legislator had chosen gradual transition to the official language as the only language of instruction to continue and facilitate introduction of improved, competency-based curriculum. Such choice had been founded on research-based conclusion that the current approach to the language of instruction, used in the educational programmes of ethnic minorities, had not ensured in full qualitative acquisition of the official language at all levels of education. Safeguarding and consolidation of the status of and proficiency in the official language is not a static aim that can be reached at a certain moment but is said to be a process that keeps changing along with the changes and development of the societal structure, geopolitical situation, and other factors influencing a language. The restriction on fundamental rights, included in the contested provisions, is said to have a legitimate aim – protection of the democratic state order and other persons' rights.

3.4. In Latvia, pre-school education is compulsory from the age of five

until the age of seven. If the Applicants' legal representatives want their children to attend institutions of pre-school education before reaching the age of compulsory pre-school education they have to respect the educational programmes that are implemented at the educational institution and the compliance thereof with the national legal regulation

The early age is exactly the best time for learning a language without great effort. The majority of the Member States of the European Union ensure programmes of pre-school education in the official language. While learning the official language, the basis for proficiency in several languages is consolidated. Insufficient proficiency in the language of instruction can turn into a serious obstacle also in other subjects. Inclusion of the language and cultural history of the ethnic minority in the general educational programmes would not comply with the requirements regarding the load of lessons.

The Ministry of Education and Science has envisaged support measures for the transitional period and these are available to all teachers, *inter alia*, those working at private educational institutions. Support measures include replacing and increasing the amount of methodological materials, courses to improve teachers' professional competence and improving the proficiency in the official language, in-service training courses for teachers, guidelines to support teachers in linguistically heterogeneous learning environments, and support to educatees.

It is planned to evaluate the practical implementation of the contested provisions and the related legal regulation in the framework of the study "Linguistic Situation in Latvia: 2021–2027". Likewise, assessment of the results of the centralised Latvian language examination is planned. Starting with the school year of 2025/2026, diagnostic assessment of the educatees' achievements will be conducted every two academic years.

No other measures can be identified that would allow reaching, in the process of general education, the same level of proficiency in the official language as the one that an educatee can attain if the official language is used as the language of instruction.

The *Saeima* does not hold that the contested provisions restrict the Applicants' right to quality education, enshrined in the first sentence of

Article 112 of the Constitution.

3.5. The second part of Article 14 of the Convention on Minorities is said to include two different approaches to ensuring acquisition of a minority language: the State may ensure proper possibilities for mastering the minority language or the possibility to acquire education in the minority language. The said provision does not prohibit the State from ensuring both approaches; however, it does not impose this as an obligation. Recognising the possible financial, administrative and technical burden, the States Parties to the Convention had been granted broad discretion.

Allegedly, the aim to ensure to persons belonging to ethnic minorities the possibility to acquire their native language will be reached by ensuring to educatees, belonging to ethnic minorities, at the level of pre-school and basic education, the possibility to follow, free of charge, interest-related educational programmes in the language and cultural history of the ethnic minority. Moreover, first and foremost, the possibility to freely use the minority language in private relationships ensures safeguarding of the minority language, culture and identity. Both the press and other mass media in their native language, as well as diverse and extensive offer of cultural events are accessible to the Russian-speaking residents of Latvia.

The *Saeima* holds that the contested provisions will not prohibit the Applicants from exercising their right to safeguard and develop their language, ethnic and cultural singularity, defined in Article 114 of the Constitution.

3.6. Allegedly, it is erroneous to assume that Amendments of 2018 had been the last stage of the reform to the language of instruction. The fact that education both at the State and local government, as well as in private educational institutions is to be acquired in the official language and not bilingually is the very essence of the reform to the language of instruction, which has lasted for several decades. Thus, the contested provisions do not introduce an entirely new legal order.

With respect to the Applicants, the contested provisions enter into effect almost a year after the adoption thereof. Support measures have been determined. Hence, the legislator has envisaged a more lenient transition to the new legal

regulation.

3.7. In its additional explanations, the *Saeima* has noted that the Ministry of Education and Science, having analysed the results of national tests in private educational institutions, has concluded that the differences between the average results to be achieved nationally should be decreased. Within five years, following the reform to the language of instruction implemented in 2018, educatees' proficiency in the official language has not improved significantly.

The number of teaching hours for learning minority language and literature, as previously, defined in the State standard of basic education in the minority educational programme, has been maintained in the interest-related educational programme, thus ensuring the possibility to use the already defined results for the educatee. Educatees or their parents can independently assess the additional burden of interest-related education on their child's daily routine and adapt it to their child's individual needs and abilities.

If a child has specific learning needs the educational institution develops an individual plan for acquiring the educational programme for such an educatee to help them integrate in the overall learning process, planning individual lessons or providing support of another kind.

3.8. At the court hearing, the *Saeima* pointed to the need for reassessing whether the claim regarding Section 9 (1¹) of Education Law has not been adjudicated already because, by the Judgement in case No. 2018-22-01, the said provision had been recognised as being compatible with the Constitution.

It is maintained that the scope of fundamental rights is different for educatees and the founders of private educational institutions. Allegedly, Article 13 of the Convention on Minorities does not fall within the limits of review for this case because the case had been initiated on the basis of a constitutional complaint submitted by two children. Moreover, it does not follow from the case materials that the Applicants would belong to the Russian ethnic minority, thus, there are objective grounds for doubting whether the contested provisions even infringe upon the Applicants' fundamental rights, included in Article 114 of the Constitution. Article 114 of the Constitution does not require linking the use of a minority language exactly with the process of formal

education. The legislator has broad discretion in deciding on how to organise the system of education. Formal education is characterised by the established division into levels of education, educational programmes with a certain curriculum, as well as issuing a State-recognised educational document. These elements of formal education are said to be irrelevant for exercising the rights of ethnic minorities.

Section 47 (2) of Education Law establishes the special right of an educational institution, *inter alia*, a private educational institution, to implement interest-related educational programmes without obtaining a licence. If an educational institution has created such a programme it may turn to the local government and request co-financing for this interest-related education. Three lessons per week for acquiring the interest-related minority education programme should be considered as a recommendation. Private educational institutions may decide to have more lessons like these or finance them themselves.

Previously, pre-school educational institutions have not fulfilled properly their duty to prepare children for acquiring successive education in school. The study, published in 2021, by the Liepāja University about the outcomes in mastering the Latvian language among children of pre-school age confirms that the proficiency in the Latvian language of children who attend pre-school education groups where the Russian language prevails in the daily life is insufficient and does not meet the requirements stating that children should be ready to start attending school with Latvian as the language of instruction or bilingual schools. Although during the previous stage of the reform to the language of instruction, the educatees' proficiency in the official language had improved, the scope of this knowledge is still insufficient.

Private educational institutions have the right to implement programmes of interest-related education at different times, taking into consideration the wishes of children and their parents. Allegedly, there is no legal regulation that would set out that the interest-related programmes of education in the minority language and cultural history should be implemented only in the morning or in the afternoon.

The international law, binding upon Latvia, prescribes certain obligations of the State in the area of education; however, it does not differentiate between educational programmes and leaves the deciding on these issues for the nation states themselves. The programme of general education and the interest-related programme of education, both, fall within the overall system of education. It is important that the curriculum of minority education is not totally excluded from the system of education.

4. The summoned person – the Ministry of Education and Science – holds that the contested provisions comply with the Constitution, *inter alia*, also because of the special status of the interest-related programme of education in the language and cultural history of ethnic minorities.

4.1. The State has the obligation to ensure to all inhabitants the possibility to master the official language. As stated in the Official Language Policy Guidelines for 2021–2027, the reform to the language of instruction in education with respect to educational programmes of national minorities is closely linked to the competency-based learning curriculum

It has been concluded in the monitoring “Outcomes of Implementing the Competency-based Learning Curriculum in the School Year of 2020/ 2021. Compared to the Outcomes of the School Year of 2019/2020” that the educational institutions that implement the pre-school educational programme of ethnic minorities had sufficiently prepared the educatees for the acquisition of basic education. Likewise, the teachers had improved their proficiency in the official language.

The conclusion that there are no alternative solutions that would allow reaching the aim of quality education and that it could be reached only by implementing studies fully in the official language had been made of the basis of the study, conducted in 2021, “Linguistic Situation in Latvia: 2016–2020” and the study of 2021 “The Outcomes of Latvian Language Acquisition among Preschoolers in Latvia: in Kurzeme, Rīga and Latgale. Acquisition of the Latvian Language”. These studies, allegedly, prove that the respondents of the youngest generation whose native language is not Latvian have higher assessment of their

proficiency in the Latvian language compared to the respondents belonging to the older generation. This is an indication of both the expansion of the use of the official language as the common language of communication in society and of the increase in integrative motivation for language learning and improvement, as well as the need to continue the course towards expanding the use of the Latvian language in all sociolinguistic spheres.

The importance of the concept “plurilingualism” has been increased in the recommendations by the Council of Europe regarding acquisition and teaching of languages. While learning the Latvian language the foundation for knowing several languages is consolidated, upon which a child’s linguistic development may be based and their further education is promoted. If the acquisition of the second or any subsequent language can be offered to a child before the age of 10 then it is possible to develop such proficiency in the language that is equivalent to the proficiency in the native language. If children do not receive enough language input from their parents in the first year of life, their further linguistic development is hindered. In view of the privileged situation of Russian language users compared to the situation of other ethnic minorities living in Latvia, it can be considered that the possibility to maintain the native language as the family’s language is the responsibility of parents and families.

4.2. During public discussions, 4711 entries were made in the public portal of draft legal acts with respect to the draft law “Amendments to Education Law”, made both by natural persons and non-governmental organizations, as well as political parties. The summary of opinions reflected all proposals, grouping together absolutely identical and similar entries. Extended explanations and grounds had been provided as to why the proposal or the objection, worded in each entry, could not be taken into consideration and had been included in the substantive sections of the annotation to the draft law.

In May of 2022, the draft law “Amendments to Education Law” had been submitted for assessment and alignment to institutions of public administration, ensuring also to the involved part of society the possibility to express their view in the public portal of draft legal acts in the form of an opinion. All objections and proposals provided by State institutions and non-governmental institutions

have been included into and are available in the note to the draft law and have been assessed on their merits. Answers have been provided, *inter alia*, to the call for separating legally private educational institutions.

4.3. Educational institutions have been given consultations on licencing programmes of education. Likewise, action plan “How to reach results and prevent risks during the transition to studies in the official language (2023–2025)” for educational institutions had been prepared, as well as a draft project for the educational institution’s work in identifying the results to be reached, possible risks, types of problem solving, methodological support, teaching strategies, as well as the best practice examples. Representatives of the Advisory Council, as well as heads of other educational institutions, teachers and support staff have been invited to become mentors for the teams of educational institutions. Likewise, courses of professional continuous education on ensuring Latvian environment and consolidation of proficiency in the Latvian language have been offered to at least 4040 teachers; support has been provided to the teachers of the official language if for more than 30 percent of the educatees in the class Latvian is not their native language, *inter alia*, teacher’s assistants have been involved in the programmes of special education; study aids have been replaced; a model interest-related educational programme in the language and cultural history of an ethnic minority has been created and sharing of best practice has been implemented; guidelines for supporting teachers who work in linguistically heterogenous study environment, reinforced monitoring has been ensured to identify problematic issues and provide the necessary support on the level of local governments and educational institutions.

4.4. The State participates in financing the remuneration for work of teachers of private educational institutions in the procedure defined by the Cabinet. Local governments may participate in financing remuneration for work of teachers in private educational institutions. Likewise, in private educational institutions, the State finances acquisition of study literature, games, methodological tools, optional literature that meet the national standards, as well as purchase or subscription fees of learning management platforms. The State and local governments also finance the catering for educatees in private

educational institutions who are mastering full-time programmes of basic education in Grades 1 to 4.

4.5. In the framework of interest-related educational programmes in minority language and cultural history, educatees will master language skills, values of intangible cultural heritage, artefacts that characterise the singularity of culture (in literature, music, visual arts, dance, theatre, film). A teacher, taking into account the age group of educatees, their interests, abilities, experience, will plan the outcomes to be reached, using also individualised and differentiated approach. A teacher provides feed-back, highlighting the positive in the educatee's activities and outlining further development possibilities in mastering the language and ethnic heritage.

4.6. In its additional opinion, the Ministry of Education and Science has noted that the study "Linguistic Situation in Latvia: 2016–2020" reflects the processes that are ongoing in society. The set of respondents in the study are the respondents aged from 18 to 74 years, representing inhabitants of Latvia with education that had been acquired in different educational institutions. This study should be considered to be representative and its results are applicable also to those who have acquired their education in private educational institutions.

The data from State information systems on the results of centralised examinations in Latvian in the period from the school year of 2018/2019 until the school year of 2022/2023 allow concluding that, in general, the performance shown by the educatees of private educational institutions in the State examination in Latvian is poorer compared to the national average. Since the reform to the language of instruction, implemented in 2018, the educatees' proficiency in the official language has not improved significantly, whereas the level of proficiency in their native (Russian) language is invariably high. Likewise, also the results of centralised examination shown by the educatees of Grades 12 in such subjects as "The Latvian Language" and "Mathematics" , in the school year of 2023/2024, had been lower than the national average results.

During the period of last three years, the average results of educatees of Grades 9 in the subjects "The Latvian Language and Literature" and "Mathematics" had been 6 scores, whereas in the school year of 2022/ 2023 it

did not exceed 6.5 scores.

The Ministry had cooperated with professors of linguistics and science of education who had conducted seminars, developed methodological materials, summarised the myths related to monolingualism, bilingualism and multilingualism. The scientists, taking into account foreign experience and research data, had pointed out that pre-school age children could master several languages well. Continuous and persistent contact with these languages is important.

The quality of education is ensured by the founder of the educational institution, cooperating with the local government institutions and other organisations, the State Education Quality Service, and the Ministry. Assessment of the quality of education and introduction of the united school approach in the period from 1 September 2023 to 29 February 2024 has been provided in the study “Ensuring Quality of Education and Inclusive Environment”.

Inter alia, analytical tools for the system of monitoring the quality of education are being developed with the support from the European Union funds. There are plans to develop such tools for educatees in Grades 3 and 6, as well as for the pre-school age. One of the basic principles of the monitoring system is helping to understand what kind of support the educatees need.

Transition to learning in Latvian is being supervised by organising on-site visits by the Ministry’s experts to educational institutions. During the first term of the school year of 2023/2024, on-site meetings with the teachers and administration working in 26 educational institutions had been held, as well as 57 open Latvian language lessons had been observed. 308 teachers, methodologists, representatives of school administrations, local governments’ employees participated in professional discussions. During the first term, visits to 12 pre-school educational institutions had been organised in cooperation with local governments. In September, October, November and December of 2023, the State Education Quality Service had conducted assessment of 101 educational institutions.

Likewise, in January of 2024, the Ministry had surveyed the educational boards of the State cities and regions regarding the implementation of the united

school approach. Local governments had conducted self-assessment of the implementation of the transition to Latvian as the language of instruction and had recognised that in 54 percent of local governments this transition was going well, in 38 percent – rather well, in 8 percent – satisfactorily. In 2023/2024, the State Education Quality Service had gone on planned visits also to private educational institutions, assessing their activities in implementing the united school approach.

The Advisory Council's group of mentors is organising experience-sharing seminars for teachers and educational institutions and is provided individual consultations. Issues related to the supply of various study aids and methodological tools and their use, provision of individual support to educatees and teaching methods to be used in organising the study process for educatees with different levels of proficiency in the Latvian language are discussed in-depth during online seminars. Likewise, the Ministry's group of experts is identifying the needs of local governments and teachers and is planning further support measures.

Teachers have access to several digital resources: E-environment for planning learning *MAPE*, *Tavaklase.lv*, website of the Agency *valoda.lv*, *maciunmacies.valoda.lv*, *sazinastilts.lv*, dictionary of the Latvian language *epupa.valoda.lv*, handbook of the Latvian language *valodasrokasgramata.lv*, application "Locīņš".

4.7. The Ministry states that the additional financing granted for the four months of 2023 for implementing the transition to the united school is 3.8 million EUR, of which 92 415 had been allocated for the acquisition of study aids needed to ensure interest-related education; 161 194 EUR for the acquisition (replacement) of study aids, of education; 120 940 EUR for activities of teacher's professional continuous education; 1 565 790 EUR for providing additional support to educatees to ensure successful transition to education with the official language as the language of instruction, educatees' camps to be held at the educational institutions during summer and autumn holidays, but in the new school year – for teacher's assistants in classes with pronounced linguistic diversity and for teachers who work in linguistically heterogenous environment

; 1 694 039 EUR for additional support (teacher's assistant, speech therapist, teacher for the extended-day groups) to those educatees who have followed educational programmes for ethnic minorities in the previous school year, and to cover the difference between the lowest monthly salary rate for teachers in pre-school and basic special education programmes; 57 836 EUR for implementing the interest-related educational programmes in minority language and cultural history.

Allegedly, the additional financing that has been allocated allows ensuring additional teacher's assistants, speech therapists and teachers at extended-day groups. Teacher's assistants provide support to expand the Latvian environment in the group, educational institution and out-of-class activities. They help children to overcome socioemotional difficulties by creating relationships of mutual trust and facilitating acquisition of the language and culture in a positive environment. Extended-day groups ensure individual approach to educatees outside lessons, providing support in mastering the study curriculum and, in particular, helping in those cases where the parents have limited possibilities to provide support to their children in studies due to their insufficient language skills. It is planned to allocate additional financing until 31 August 2026. In the coming years, the Ministry has included the necessary financing in the priority measures of the budget, paying special attention to the implementation of the united school approach and reinforcing the habits of language use among the educatees, belonging to ethnic minorities.

Problems in the implementation of the study process in Latvian can be identified in some educational institutions where the attitude towards transition to education in the official language is formal and insufficient attention is paid to preparing fully and using the offered types of support as much as possible. Cooperation between the educational institution and parents is said to be essential in successfully introducing the official language in the study process.

The Ministry has conducted several surveys on the transition to studies in the official language, wherein also private educational institutions have provided their opinion. Educational institutions had been asked, *inter alia*, whether they plan to organise camps for educatees to learn the Latvian language, and several

private educational institutions have planned to do that in the summer of 2024. Likewise, the institutions have been asked whether activities for pupils have been planned during breaks, to facilitate communication in Latvian; whether the teachers of the educational institution need courses for improving their proficiency in Latvian; whether the educational institution is planning a self-help strategy for teachers. The responding private educational institutions, which previously had been implementing educational programmes for ethnic minorities, had assessed their readiness to the transition in studies in the Latvian language as good and very good.

4.8. Following the launch of the interest-related educational programme in minority language and cultural history, the Ministry, in cooperation with local governments, will assess the actual demand for such programmes. In the case of high demand, the matter of allocating additional financing will be submitted for review to the Cabinet in the process of preparing and reviewing the draft State budget law for the current year and for the mid-term.

Also until now, folklore groups of minority children and adolescents, theatres of educatees belonging to ethnic minorities, vocal and instrumental music groups, dance groups, art groups have traditionally functioned in the area of interest-related cultural education, studying and cultivating the traditions of ethnic minorities. Representatives of the target groups from various ethnic minorities are said to be engaged in the area of cultural education: Russians, Belarusians, Ukrainians, Poles, Lithuanians, Estonians, Jews, Roma.

Until 31 August 2022, 19 private institutions of pre-school education implemented the pre-school educational programme for ethnic minorities. One of these institutions, pre-school educational institution “GALAKTIKA”, is implementing interest-related pre-school educational programme in minority language and cultural history since 1 September 2023. On 28 May 2024, 14 private educational institutions, which implement the programme of basic education of ethnic minorities, on the basis of Para 102 of Transitional Provisions of Education Law, have been registered in the State Education Information System. However, none of them is implementing the interest-related

educational programme in minority language and cultural history in Grades 1, 4 and 7.

4.9. In Latvia, study work on the level of pre-school education is divided into two stages. The first stage is pre-school education in a child's early childhood, from eighteen months to five years of age. During this stage, pre-school education is not mandatory. The second stage is mandatory for a child from the age of five to seven years. During the stage of pre-school education from eighteen months to five years parents are said to have the primary role. The stage of pre-school education from eighteen months to five years cannot be viewed in isolation from the general system of education. It falls within this system and is an integral part thereof. From the age of five, pre-school education is compulsory for a child. Its aim is to prepare the child for the acquisition of basic education.

Pre-school education must be implemented in accordance with the samples of pre-school educational programmes provided in the annexes to Guidelines for Pre-school Education. "Pre-school Educational Programme", available from the information system of the National Centre for Education, this is only recommended support material and not a mandatory requirement that must be met or rules that a teacher should take into account in developing a pre-school educational programme.

Pursuant to Para 11 of Guidelines for Pre-school Education, the principle of implementing the pre-school educational curriculum is a united process of upbringing and learning, in which a child masters, in practical activities, knowledge, understanding and basic skills in various areas of studies, develops transversal skills and forms values-based habits. The main form, in which studies are organised, is a play lesson which is implemented throughout the day indoors and outdoors, including a child's free and independent play and a targeted play lesson, organised and indirectly led by the teacher, ensuring an even load, rest and child's activities in accordance with their individual abilities. A child learns also during meals and procedures of individual hygiene. A break in a child's learning process is only during the rest period after lunch when the child sleeps.

The head of an institution of pre-school education, in cooperation with parents, determines the schedule for implementing various interest-related educational programmes, *inter alia*, interest-related educational programmes of ethnic minorities. An educatee aged eighteen months can start the acquisition of interest-related education. However, practice shows that, in the majority of cases, children begin acquiring interest-related education from age of three years, when the transition from child's object-manipulative activity, which focuses on exploring objects, space and form, to story-based role-play, through which a child explores the surrounding world, occurs. A teacher who works with an interest-related educational programme for ethnic minorities, can align it with the topics to be mastered in the pre-school educational programme, thus ensuring that both programmes interact content-wise.

4.10. At the court hearing, the Ministry of Education and Science noted that various materials had been prepared for pre-school educatees for the transition to education in the official language, e.g., picture books and picture dictionaries, sets of games, materials for teachers also have been prepared. The Agency continues working on developing teaching kits.

The possibility to acquire interest-related programmes of ethnic minorities will be provided also to those children who previously have not been enrolled in educational programmes of ethnic minorities.

Educational institutions, to which inter-governmental agreements apply, implement the study plan in accordance with the educational standard, defined in the State. Additionally, these educational institutions may prepare their original programme and licence it at the State Education Quality Service, including in it, e.g., teaching of Hebrew. The fact that the State provides the opportunity to these children of ethnic minorities to learn their language is not a proof of inequality because the State's aim is to become integrated in the educational area of the European Union. Some educational institutions of ethnic minorities, on their own initiative, have been implementing, for a long time already, on their own initiative, the study process only in the official language. Likewise, representatives of ethnic minorities may establish educational

institutions, which do not implement the State-defined educational programme, e.g., Sunday schools or educational institutions of another type.

In view of the historical circumstances and geopolitical situation, it can be concluded that the Russian language has no place in the State-defined standard of education. Moreover, in private educational institutions of ethnic minorities, the average result in the State examination in the Latvian language had been 43.8 percent, whereas in all other schools of ethnic minorities in total – 45.5 percent, whereas in schools, which implement the study process in Latvian, – 62.1 percent, and the average result of all schools – 58.1 percent.

Bilingual work cannot be considered as implementation of the study process in the official language. To comfort an educatee, a teacher has been taught to use various pedagogical methods that do not require using a particular language. In early age, gestures, facial expression and the sense of security provided by physical presence are very important for a child in communication.

Services of a speech therapist to children are provided in the official language. The use of the native language would be admissible in critical situations or in situations where the life of an educatee is endangered. Educatees of pre-school age are not prohibited from communicating in daily life in their native language; however, the teacher is not obliged to know the minority language.

The mandatory curriculum, defined in Guidelines for Pre-school Education, applies to every child in an institution of pre-school education, thus, also to children starting from the age of eighteen months. Every child must master age-appropriate skills in seven areas of learning. At the end of each year, the teacher assesses the child's achievements and provides feedback to parents on what the child has mastered.

The classes in interest-related education for ethnic minorities are included in the time scheduled by the educational institution for implementing the programme of basic education. Guidelines for Pre-school Education do not prescribe specific time at which an institution of pre-school education should implement the mandatory curriculum or the interest-related educational programme for ethnic minorities. An institution of pre-school education, in particular, a private educational institution, agrees on its schedule with the

parents of educatees. In institutions of pre-school education, the interest-related educational programme supplements the mandatory curriculum and is said to create smooth transitions from the basic programme to be mastered. Acquisition of the basic educational programme in the form of a play lesson is to be implemented throughout the day, whereas the interest-related educational programme for ethnic minorities, during a much smaller part compared to the programme in the official language. Another parallel optional class can be organised for other educatees.

The interest-related educational programme for ethnic minorities is not assessed and included in the assessment of the implementation of the pre-school educational programme; however, those who implement these programmes must provide feed-back to the educatee's parents.

Allegedly, there is no information as to why private educational institutions choose to not implement interest-related educational programmes for ethnic minorities. The Ministry of Education and Science has provided extensive information regarding the possibilities to finance such programmes. Whereas the heads and founders of educational institutions have the duty to inform the educatees' parents about this possibility.

5. The summoned person – the Ministry of Justice – subscribes to the opinion expressed in the *Saeima's* written reply, *inter alia*, on Latvia's special historical circumstances, which have been of decisive importance in the adoption of the contested provisions, and on the role of the official language in the current geopolitical situation. The requirement to use the official language in the process of acquiring education is said to ensure protection for the official language, to facilitate the development of the official language, to promote social integration on the basis of a single, united official language, and to decrease division in society over language.

The standards of general education are applicable also to private educational institutions. Thus, the contested provisions do not restrict the right to education, envisaged in the first sentence of Article 112 of the Constitution.

Allegedly, the Convention on Minorities leaves to the States broad

discretion in implementing the principles, determined therein. The legislator has chosen to promote the right, included in Article 114 of the Constitution, by ensuring, in the stages of pre-school and primary education, to master, free of charge, the curriculum of minority education in interest-related programmes in minority language and cultural history. Neither the Convention on Minorities nor Article 114 of the Convention imposes an obligation on the State to ensure studies in minority languages. Article 13 of the Convention on Minorities should not be applied to the Applicants because they are not founders of an educational institution.

It is maintained that the findings of the Advisory Committee are not legally binding. The opinion set out therein is based on the documents, submitted to the Committee, and thus, the statements made in the opinion should be examined in conjunction with these.

Conclusion of international agreements is the manifestation of States' free will. A State may choose itself the States that it has the closest ties with and with which it wants to conclude such agreements.

Personal data on nationality are to be indicated voluntarily in the Population Register. The State does not verify these data. From the perspective of the Convention on Minorities, it should be assessed whether a person has family ties with the particular ethnic minority.

6. The summoned person – the State Education Quality Service (hereafter – the Quality Service) – has pointed out that it supervises compliance with regulatory enactments in the area of education in the activities of all types of educational institution.

In the school year of 2023/2024, the Quality Service has assessed the transition to a united school, *inter alia*, also in private institutions of pre-school education. The Quality Service has obtained information and data on how the study process in the official language is ensured and ascertained the professional performance of the heads of educational institutions in ensuring the transition to a united school and the implementation of the educational process in the official language on the day of the evaluation.

Once per six years, the Quality Service organises assessment of the professional performance of the heads of institutions of pre-school education. If, with respect to any of the assessment criteria, “insufficient” level has been identified or if, in re-assessment, the level “needs improvements” is identified then the Quality Service adopts a decision on the unsuitability of the head of the institution of pre-school education for the position. The founder of the institution of pre-school education is informed about such assessment and is given the recommendation to terminate the legal employment relationship with the head of the institution of pre-school education. Until now, not a single decision of the kind has been adopted with respect to the heads of private institutions of minority pre-school education.

The interaction between the implementation of an interest-related pre-school minority education programme and a programme of pre-school education does not fall within the competence of the Quality Service; however, judging by the observations made in practice, it can be assumed that ensuring the possibilities for mastering interest-related educational programmes could be assessed positively because the educational process is being diversified and expanded, satisfying children’s various needs and interests. Allegedly, there are no grounds for asserting that interest-related educational programmes would leave a negative impact upon the quality in implementing pre-school educational programmes.

The councils of educational institutions, being collegiate institutions, consisting of the representatives of the educatees’ parents and teachers, may participate in discussions on the process of education and the outcomes thereof, submit to the head of the educational institution proposals regarding the organisation of the institution’s work and implementation of educational programmes. Thus, also the council of a pre-school educational institution may participate actively in resolving the matters related to the quality of pre-school education and implementation of interest-related educational programmes.

At the court hearing, the Quality Service pointed out that its task was to control the educational process, as well as to provide recommendations on eliminating the identified shortcomings. The control over educational process is

implemented, *inter alia*, by responding to various information, submissions, complaints. If a complaint regarding the implementation of interest-related education were received then the Quality Service would conduct inspection and assess the compliance with regulatory enactments.

In the process of evaluating the head of an educational institution, the Quality Service verifies the documents accessible in the State Education Information System, *inter alia*, the school's self-assessment and the statute, as well as goes on on-site visits, observing classes and meeting the teachers, management and administration of the school, as well as parents. Experts also may inform educational institutions about the possibilities available to them.

The classes in the interest-related educational programme can take place in various times of the day, taking into consideration the child's workload. As regards the planning of a child's daily schedule, cooperation with the council of the educational institution takes place; however, its decisions and opinions are mainly recommendatory by nature. The head of the educational institution, who ensures the legality of the institution's activities and quality in general, may disagree with the council's proposal, providing arguments for that.

Each educational institution may implement the programme of pre-school education at different times. These could be, for example, four, eight or twelve hours. The time when the programme is implemented also determines the daily schedule. The interest-related minority educational programme may not take priority over the mandatory curriculum, it can be only supplementary by nature. If the classes in interest-related education were held only in the afternoon in the course of several hours it could not be called interaction but would be only implementation of two programmes. An institution of preschool education should be able to differentiate between the time when the mandatory curriculum is implemented and when – the interest-related minority educational programme. A teacher cannot implement both programmes simultaneously, *inter alia*, also because the remuneration for work is separated. Likewise, the parents of educatees should be informed about this separation. The task of the Quality Service is to ascertain that a child is mastering the curriculum of pre-school education.

To receive a local government's support for implementing the pre-school educational programme, it must be implemented in twelve hours. A situation is possible where an institution of pre-school education, which does not receive a local government's support, implement the pre-school educational programme, for example, in eight hours and, following this, – the interest-related educational programme.

The responsibility for a child's workload, primarily, lies upon the parents. Interest-related educational programmes are being implemented and attended not only in the pre-school but also outside it.

7. The summoned person – the National Centre for Education – notes that an institution of pre-school education may implement an educational programme that has been licensed in the procedure established by the Cabinet and that, in the development and implementation of such programmes, the Guidelines for Pre-school Education are mandatory. The sample programme of pre-school education "Programme of Pre-school Education" only provides methodological support for teachers. The head of each educational institution is responsible for organising the work and learning process at the institution of pre-school education, including the planned daily schedule.

A child masters the pre-school curriculum in integrated learning process – during a play lesson throughout the day, comprising the planned outcomes that the child must attain in several areas of learning. In planning the implementation of the curriculum, a teacher chooses a topic that is relevant for the child, linked to the child's interests, events in society or processes in nature.

A teacher, focusing on the planned outcomes that a child should attain in the respective topic, defines further the outcomes for a shorter period – a week, a day – and plans the child's and the teacher's activities, needed to reach these, ensuring to the child the possibility to master part of the curriculum outdoors, including regular daily physical activities and conditions for developing health-promoting habits, as well as envisaging various special events, e.g., related to national festivities, seasonal rites and traditions. In the learning process, a teacher may change the expected outcomes and activities in accordance with the child's

needs, as well as due to other circumstances.

At the court hearing, the representative of the National Centre for Education underscored that, in defining the mandatory curriculum, the focus had been on graduating from the pre-school. An educational institution implements a pre-school educational programme to ensure that the mandatory curriculum is mastered or particular outcomes to be attained before graduating from the pre-school are reached. The planning and implementation of this process is said to be within the competence of the educational institution. The head of the educational institution is responsible for the thematic plans and daily schedule, prepared by the teacher.

The educational curriculum should be considered as a whole. Teaching of separate subjects should not be supported; learning should be integrated so that the mastering of one skill leads to the mastering of another. Every educational institution, irrespective of its status, should have a defined daily schedule. The programme of pre-school education, including the principles and aims defined for it, differs from educating a child in the family.

Any understanding by the child of the language and culture of other nations improves the quality of education. However, the process of education should be implemented in the official language, at the same time allowing preservation of the identity, language and culture of ethnic minorities. Public organisations play a certain role in the preservation of the minority identity.

Interest-related education *per se* does not create problems for a child in the acquisition of a language. If it is implemented in an appropriate form, i.e., as short play lessons, according to the child's ability to perceive, then classes in interest-related education could be planned already from the age of eighteen months.

Interest-related pre-school education can be implemented both on the basis of parents' demands and as the initiative of the educational institution. The teachers who provide interest-related education may cooperate with the teachers who implement the pre-school educational programme, *inter alia*, by developing parallel content. The head of the educational institution has the possibility to

schedule classes in the interest-related education also during the first half of the day.

8. The summoned person – the Ombudsman – points out that the contested provisions complete the gradual transition to learning in the official language and creation of a united system of education at all levels of education with the purpose of reinforcing the use of the official language and fostering the cohesion of the civil society and protection of the democratic order, as well as of promoting the proficiency in the official language as the basis for a person's further possibilities to use the official language fully and, thus, gain maximum benefit from the system of education, established in the State, and become integrated in the Latvian society.

Allegedly, both the Ombudsman's study of 2013 "Bilingual Education" and the study conducted by the Liepāja University "The Results of Latvian Language Acquisition among Pre-schoolers in Latvia: In Kurzeme, Rīga and Latgale. Acquisition of the Latvian Language" prove that the bilingual education has not resulted in good proficiency in the Latvian language.

The meaning and content of the rights, defined in the first part of Article 13 of the Convention on Minorities, is exactly ensuring the possibility to obtain education in one's own language, the language of a minority. Thus, when an obligation to ensure acquisition of education in the official language is imposed, this right becomes meaningless. Ensuring interest-related minority education does not guarantee the right of persons belonging to ethnic minorities to establish private educational institutions because a local government, within its administrative territory, may ensure that the respective programmes are implemented in the education institutions established by it. The aim, set out in Article 14 of the Convention on Minorities, to preserve one's national identity, master the minority language, traditions and culture could be reached in the framework of interest-related education.

Since the right of minority representatives to choose the language of instruction of an educational institution does not follow from Article 112 of the Constitution, the contested provisions should be reviewed insofar they pertain to

the right, guaranteed for everyone, to acquire quality education. Taking into account the individualised and personalised support in obtaining proficiency in the official language, envisaged in Education Law, the contested provisions should be recognised as being compatible with Article 112 of the Constitution.

At the court hearing, the Ombudsman pointed out that interest-related education was part of the general system of education. From children's perspective, replacement of the minority educational programme with an interest-related educational programme is not of decisive importance. The previous regulation on bilingual education, determined in regulatory enactments, in practice had not complied with the proportion of language use because control over the process of education had been lacking.

An optimal solution would be to give to private educational institutions the possibility to include the interest-related education programme in the basic programme and implement it as concrete subjects of study.

The State should take into account international treaties and opinions provided by international organisations, however, the opinions of committees are not legally binding.

9. The summoned person – the Representative of Latvia before International Human Rights Organisations – in its opinion has provided overview of international practice that, possibly, could be applied in the present case.

9.1. Article 2 of the First Protocol to the Convention is said to guarantee to persons the right to access to State-established educational institutions and the right to benefit in the long-term from the education acquired therein; however, this provision does not guarantee to a person the right to the establishment of and subsidies for such schools, *inter alia*, private educational institutions, where the acquisition of education in a particular language would be organised. This conclusion is said to go hand-in-hand with the case law of the Court of Justice of the European Union, pursuant to which none of the provisions in the Convention *per se* guarantees to persons the right to free use of any language (*linguistic freedom*) or the right to choose a language of instruction that is not the

official language. The case law of the European Court of Human Rights, referred to in the constitutional complaint, is not applicable to the present case.

The European Court of Human Rights interprets the right to education in interconnection with other instruments of international law, *inter alia*, the International Covenant on Economic, Social and Cultural Rights, the European Social Charter, the Convention on Minorities, etc. Moreover, in reviewing the complaints alleging violations of Article 2 of the First Protocol to the Convention, the European Court of Human Rights has underscored that the Convention guarantees practical rather than illusory rights. At the same time, the right to education may be restricted. States have broad discretion in determining not only the curriculum of education but also organisation of education since the States themselves are in the best position to assess what society needs. Simultaneously, the scope of a State's discretion differs with respect to various levels of education: the lower the level of education, the less discretion a State enjoys. This is said to be also in line with the view of other international human rights monitoring bodies that, at the lower levels of education, the actions of States in interfering with the educatees' rights should be particularly cautious and substantiated.

Persons' right to establish and manage private educational institutions does not mean that States should recognise any curriculum mastered at a private educational institution. As the European Court of Human Rights has recognised in the case "*Family H. v. the United Kingdom*", the States should create such a system of education that is able to ensure the State-defined standard of education, irrespective of whether education is provided by the State or private educational institutions. However, insofar the curriculum of education is based on research and the assessment of the educatees' needs and does not step over the border that could be equalled to indoctrination of educatees, the State's interference with the parents' rights is not disproportionate.

It is the State's obligation to ensure that the system of education is not segregated. Although the European Court of Human Rights has developed its current case law, primarily, by explaining the obligations of the States with respect to Romani educatees, its conclusions, undoubtedly, are applicable to the

system of education in general.

Finally, the theses expressed in the case “*Bulgakov v. Ukraine*” mean that, in the context of the present case, the consideration that the State should create a system of inclusive education, respecting the interests of vulnerable groups and cultural particularities of ethnic minorities, should be juxtaposed to the fact that a uniform understanding of language policy and the language use in society has not developed in the States Parties to the Convention. This juxtaposition affects the State's discretion to address a particular issue, envisaging, on the one hand, that the States have broad discretion in developing their system of education and adopting the policy for the protection of the official language, but, on the other hand, narrows the States’ discretion in the areas where a united understanding of the rights of ethnic minorities is developing.

9.2. The purpose of the right to education, guaranteed in the International Covenant on Economic, Social and Cultural Rights, is to ensure that the education system is geared towards the protection of human dignity, facilitates an individual’s inclusion and participation in free society and promotes understanding between various ethnic groups. Pursuant to Para 2 of Article 13 of this Covenant, the States have the obligation to create a system of education that is able to ensure its accessibility, availability, acceptability and adaptability.

The UN Special Rapporteur on the right to education has acknowledged that the lack of education in the native language is often the cause of a child's separation from the rest of society. This, in particular, applies to ethnic minorities and migrants because children master the curriculum of education better if, in the initial stages of education, it is taught in their native language. This approach is in line with the European Court of Human Rights' conclusions on the differences in the States’ discretion at different levels of education.

The Committee on Economic, Social and Cultural Rights has pointed out that the right of persons belonging to ethnic minorities to education in their own language or the right to learn their language, with particular emphasis on the importance of the native language in the initial stages of education, has been recognised in international law but, at the same time, it is noted that the necessary measures and requirements are dictated by the order existing in the State and its

values. Hence, it can be concluded that the States, through creating their system of education, should facilitate the social inclusion of persons belonging to ethnic minorities. Moreover, pursuant to Article 2 of the International Covenant on Economic, Social and Cultural Rights, in conjunction with Article 13 and Article 15, States have the right to establish reasoned and necessary restrictions with respect to language use in education. Whereas the rights, guaranteed in Para 4 of Article 13 of this Covenant, should be interpreted in close conjunction with Para 3 of the same Article, which establishes the parents' right to choose the most appropriate educational institutions for their children, as long as they are able to meet the minimum educational standard set by the State. The primary purpose of this right is to impose an obligation upon the State to refrain from such actions that could be considered as being disproportionate interference with the operations of private educational institutions.

Article 28 and Article 29 of the Convention on the Rights of the Child are said to be based on similar considerations. These provisions, in the interpretation of which also the right to the protection of minority culture, guaranteed in Article 30 of the Convention, should be taken into account, are aimed at ensuring quality education to all, respecting the right of persons belonging to ethnic minorities to preserve their language and culture. The Committee on the Rights of the Child has explained in General Comment No. 1 that if private educational institutions have been established in the State that ensure that the State standard of education is met and are not contrary to the child's interests of becoming integrated in society then the State's primary task is to refrain from interfering with the operation of such schools.

However, neither the International Covenant on Economic, Social and Cultural Rights nor the Convention on the Rights of the Child define the proportion, in which provision of education in the minority language would be admissible.

9.3. The States' positive obligation to allow persons to establish and manage minority educational institutions and the negative obligation not to interfere with the functioning thereof, unless it does not affect the State's standards of education and the general aim of education to integrate ethnic

minorities in society and disallow segregation of educational system, is said to follow from Article 13 and Article 14 of the Convention on Minorities. The UN Committee on Economic, Social and Cultural Rights takes a similar approach to the general interpretation of the use of minority languages in education.

The Advisory Committee has recognised that Article 14 of the Convention on Minorities could require the State to include in the educational curriculum classes in the minority language if the particular language is especially endangered. However, the national regulation on the rights of ethnic minorities in education should be flexible enough to provide effective protection to these rights. The States have taken different approaches to ensuring, within their system of education, the right to persons belonging to ethnic minorities to learn their language: they can envisage in the public system of education special out-of-school classes, where persons have the possibility to learn the minority language; to create such a system where the minority educational programmes and, thus, also the possibility to learn the minority language, are primarily ensured by private educational institutions; to create such a system of education, in which the official language and the minority language are acquired in parallel or in Sunday schools, etc. Hence, the State has broad discretion with respect to the way, in which it will ensure the right of persons belonging to ethnic minorities to learn their language and, thus, preserve their culture.

9.4. Pursuant to Article 27 of the International Covenant on Civil and Political Rights, the main obligation of States in the area of protecting ethnic minorities and language is not to deny the persons belonging to ethnic minorities the right to communicate in their language and to enjoy, develop and improve their language at the private level. In the case *“Mavlonov and Sa’di v. Uzbekistan”*, the UN Human Rights Committee has concluded that education in the language of ethnic minority is an important part of minority culture; however, as regards the matter whether the State has imposed disproportionate restrictions on the rights of persons belonging to ethnic minorities, the decisive circumstance is whether the contested restriction has impacted the rights of ethnic minorities to the extent that persons belonging to ethnic minorities have been fully denied the possibility to maintain their culture.

Article 24 of the International Covenant on Civic and Political Rights is said to protect the right of a child to the State's protection without discrimination of any kind. Pursuant to General Comment No. 17 of the UN Human Rights Committee, this Article sets out that, in the area of culture, the State must take every possible action to facilitate the development of the child's personality and would ensure to children such level of education that would allow them to exercise effectively also other rights, guaranteed in the Covenant, in particular, the right to the freedom of speech and expression and the freedom of thought and conscience. However, no conclusion has emerged as to the extent of the State's discretion is requiring private educational institutions to implement the educational process in the official language.

9.5. The interpretation of Article 15 of the International Covenant on Economic, Social and Cultural Rights, provided in General Comment No. 21 on the right to culture, requires the States, in developing the educational curricula, to take into account the particularities of minorities' culture and language. One of the States' obligations is to ensure the right of persons belonging to ethnic minorities to choose and to establish their own educational institutions. However, the States' obligations, *inter alia*, with respect to the use of language in education, are aimed at preserving ethnic minorities. Such a reference validly suggests that the vulnerability of an ethnic minority is an aspect that States should take into account when assessing the proportionality of measures restricting minority rights.

The findings included in General Comment No. 11 of the Committee on the Rights of the Child regarding respecting the cultural values in the process of education could be used more broadly. It has been noted that a child who belongs to an ethnic minority has the right to use their own language in the process of acquiring education. Such right of the child require appropriate actions by the State; however, basically, demands that the child would be able to read and right in their native language. For example, the Committee on the Rights of the Child in its final conclusions on the Second to Fourth Report on Estonia has not stated that the requirement to acquire education, in a certain proportion, in the official language would violate the rights, guaranteed in Articles 28–30 of the

Convention on the Rights of the Child.

9.6. In its Third Report on Latvia, the Advisory Committee had expressed concern regarding the plans to increase the proportion of the Latvian language as the language of instruction at all levels of education. Emphasising the importance of the initial stage of education in a child's development, the Advisory Committee had called upon Latvia to ensure the bilingual approach in the pre-school stage of education. Likewise, in its Resolution of 3 March 2021, the Committee of Ministers has urged Latvia to envisage the possibilities for learning in the languages of ethnic minorities and, at the same time to, ensure that the parents of children belonging to ethnic minorities are heard in the decision-making process. However, no organisation has provided separate assessment of the restrictions imposed upon private educational institutions. All of them have noted only that the requirement to ensure education, in a certain proportion, in the official language should be balanced with the autonomy of private educational institutions.

The Venice Commission, in its opinion of 18 June 2020 on the amendments to the Latvian legal regulation, leading to increase of the proportion of the Latvian language as the language of instruction in education, not only highlighted the differences in the State's discretion at various levels of education recommended more lenient regulation at the lower levels of education, as well as concluded that "mandatory education in the official language in private educational institutions is contrary [to Article 13 of the Convention on Minorities]. [...] In its opinion of 2019 on Ukraine, the Venice Commission welcomed the amendments, adopted by Ukraine, to the legal regulation, pursuant to which private educational institutions may choose the language, in which education is ensured, retaining the obligation to ensure high level of proficiency in the Ukrainian language. [...] The Commission sees no particular reason to depart from this conclusion with regard to the situation in Latvia". Thus, it can be concluded that the Venice Commission has not unequivocally recognised that the States could not define a certain proportion of the curriculum that should be taught in the official language if this requirement serves the purpose of integrating ethnic minorities in the general society of the State and ensure quality

education. However, the State should not totally prohibit private educational institutions from providing education in the language of an ethnic minority.

Finally, on 30 March 2021, the UN Committee on Economic, Social and Cultural Rights, in its concluding observations on Latvia's second regular report on the implementation of the International Covenant on Economic, Social and Cultural Rights in Latvia, with respect to the implementation of Article 15 of this Covenant had expressed concern regarding the impact of the stage in the reform to the language of instruction in education, implemented in 2018, on the teaching of minority languages in State and private educational institutions at the levels of pre-school and basic education. The Committee's main call was to ensure that the transition did not have a disproportionate impact on the quality of children's education and that ethnic minority children had the opportunity to learn their own language within the education system.

9.7. The practice of the committees monitoring the UN human rights treaties and the conclusions made by other advisory and explanatory mechanisms and commissions are to be considered as being authoritative, however, they do not comprise legally binding conclusions. The State must review these conclusions and, if necessary, implement them or, providing appropriate substantiation, explain why the particular recommendations should be implemented only partially, to a limited extent or not at all. In substantiating the regulation it has drafted, the State should provide assessment of the rights, guaranteed in the respective international treaty, on their merits, referring also to the conclusions made by the respective organizations.

The legally binding nature of the Constitutional Court's rulings is said to be the factor due to which the legislator, in drafting legal regulation in the area with respect to which the Constitutional Court already has provided its findings, in principle, is obliged to provide explanation as to how these Constitutional Court's findings will be implemented in practice through this new regulation. The Representative of Latvia before International Human Rights Institutions concludes that the legislator, in the process of drafting the contested provisions, has taken into account the existing judicature of the Constitutional Court. The principle of good legislative procedure *per se* does not prohibit the legislator

from departing from the Constitutional Court's conclusions when it is objectively necessary and the legislator has provided sufficient substantiation for this deviation, having assessed comprehensively, in parallel, also the compliance of this regulation with human rights.

9.8. The alternative offered by the Applicants – the obligation to ensure at the institutions of minority education acquisition of the Latvian language and taking the State examinations in the official language on the same terms as in an educational institution where the entire educational programme is implemented in the official language, actually, urges to return to the model that was in force before the stage of the reform to the language of instruction in education implemented in 2018.

In matters pertaining to private institutions of minority education, the State's discretion is narrower. The State's decisions, by which it determines the proportion in which the official language is used in private educational institutions, should be based on relevant considerations linked to the need to ensure quality of education and integrate the minority children in society. It is always advisable to substantiate such considerations by empirical and scientific conclusions on the impact that the particular measure would have upon the quality of education and the rights of ethnic minorities. The matter of the absolute prohibition of language use is said to be essential, in conjunction with the previous findings expressed by the Constitutional Court.

At the court hearing, the Representative of Latvia before International Human Rights Organisations referred to the finding made by the European Court of Human Rights that Article 114 of the Constitution provided a higher level of protection for ethnic minorities than the Convention. In assessing the compliance of legal provisions with Article 112 of the Constitution, in conjunction with Article 114, Article 13 of the Convention on Minorities should also be taken into account. The State should not set a different scope of language use, depending on the level of education; however, the following should be taken into account: the lower the level of education, the more important the justification for the respective rules should be. While drafting the legislation, the legislator is not prohibited from reviewing the system in general, without differentiating between

various levels and without providing in-depth explanation for each of them. Even if the State did not finance private educational institutions, their discretion, nevertheless, would not be unlimited.

The State has the discretion to conclude bilateral agreements and define other procedures therein. Bilateral agreements could affect the proportionality assessment.

10. The summoned person – Professor of Clinical Psychology at the University of Latvia, Senior Researcher in Educational Psychology, Expert of the Informal Expert Group on Supportive Learning Environments for Children at Risk and Promoting Well-being in Schools of the Directorate General for Education, Youth, Sport and Culture of the European Commission *Dr. psych. Baiba Martinsone* – points out that the need to control constantly the codes of two languages could facilitate the development of superior management functions (e.g., cognitive flexibility, control over impulses). The statement that, without envisaging for the child the possibility to use the minority language in the process of education, the acquisition of the official language could be adversely affected, is said to be unfounded.

At the court hearing, *Dr. psych. Baiba Martinsone* noted that, for a teenager, the acquisition of a new language is always linked to additional cognitive load and it could be influenced by emotional resistance, as well as development of self-assessment. However, the more a language is used, the more stable its code becomes. If a young child immediately starts speaking in a bilingual environment they can consolidate simultaneously the codes of both languages and this opens up more opportunities for the child.

At the age of two, children are unable to cooperate with each other, therefore language is not that important in the interaction between peers. Emotional safety is important for a child, and it is the duty of teachers and parents to ensure it.

The year-long transitional period is said to be sufficient for the children to be able to adjust to changes.

11. The summoned person – Associate Professor, Leading Researcher at the University of Latvia, *Dr. paed. Ieva Margeviča-Grinberga* – points out that education is the most effective way for integrating the minority educatees.

Allegedly, interest-related education fosters the self-confidence of educatees, their time-planning skills, development of leadership, positive behaviour, as well as boosts academic achievements. Interest-related education could be considered as being an important part of comprehensive education, as it offers various ways for consolidating what has been taught at school and ensures its practical use in real-life situations.

Research results prove that interest-related education can ensure both the acquisition of a language and preservation of culture and identity. The social interactions of educatees with their peers in the framework of interest-related educational programmes in minority language and cultural history is said to be as important as the acquisition of the language itself. Teachers in interest-related education work with smaller groups and, thus, can identify better the interests, needs and readiness to learn of each pupil. The majority of states in the European Union offer the possibility of to study the native language and culture in extracurricular activities.

Learning of minority languages should be promoted already at an early age and also later, irrespective of the acquisition of a particular first or second language. Appropriate linguistic environment should be created where acquisition of the language is constantly stimulated, which, in turn, provides the possibility for developing the communicative competence. The child's family and social environment have an important place in this process. Quality learning of minority languages, social integration and the sense of belonging are possible only if all opportunities, offered by formal and interest-related education, as well as the community and the daily learning process, are used.

Research results prove that proficiency in the native language improve the academic achievements, facilitates deeper understanding of concepts, as well as clearer understanding of the learning curriculum, the skills of effective communication and critical thinking. The educatees who learn their native language have a stronger sense of their identity and cultural affiliation. Analysis

of the experience of many countries allows concluding that the possibilities for learning and maintaining their native language should be accessible to children of ethnic minorities.

The approach that would prohibit a child in the pre-school stage or in elementary school to use the native language is said to be pedagogically incorrect as it denies or infringes upon a child's identity. In the process of formal education, the native language of every educatee should be respected and a curriculum that is linked to pupils' cultural identity and experience should be included. This could help minority educatees to become aware of their own and their community's belonging to the school and society in general, ensure their involvement in public life and achievements.

Taken together, the research findings suggest that learning of another language on the basis of one's native language, is more effective and sustainable than it would be in a situation of linguistic isolation.

However, research also reveals that minority educatees master the language of instruction better if they consistently speak it every day in the school environment. Although there are many advantages to preserving the native language, however, as regards inclusion in society, education and work, the proficiency in the official language is and will be of decisive importance.

The use of only one language in the educational process can have different impact on the psycho-emotional and physical development of educatees, depending on several factors, *inter alia*, the child's age, proficiency in the language of instruction, parents' attitude towards the official language, cooperation between the educational institution and the parents, accessibility of support provided in the native language, and the learning environment. The decisive factors that facilitate the educatee's develop is said to be attitude rather than the language that is used in the learning process. Educatees learn better if they have safe, positive relationships with adults who know how to support their development and learning.

At the court hearing, *Dr. paed.* Ieva Margeviča-Grinberga noted that, in classes that are held in the official language, attention is paid also, for example, to festivities of the ethnic minorities that are represented by the educatees.

Whether it is enough to have three lessons per week to acquire the interest-related educational programme depends on the child's motivation, the language that is spoken in the family and outside it. If the State had sufficient financing available then also a larger number of lessons for the acquisition of interest-related education should be supported.

12. The summoned person – Professor at the University of Liepāja, Senior Researcher at the Kurzeme Institute of Humanities *Dr. habil. philol. Dace Markus* – underscores that learning in the official language is not an end in itself but means for mastering this language on the level that is close to the knowledge of the native language.

Already since 2018, a group of researchers had followed both the development of Latvian as the native language and the development of Latvian language skills of minority children in pre-school age through anonymous testing and interviews in public, private and international pre-school educational institutions in different regions of Latvia. It was concluded that the proficiency in the Latvian language did not depend upon the child's ethnicity but on its use in the institution of pre-school education. This, in particular, applies to families in which the Latvian language is not used. The pre-school age minority children, involved in the study, who attended bilingual groups where, actually, the Russian language prevailed, had insufficient experience in using the Latvian language. Whereas the proficiency in the Latvian language of minority children who had been enrolled in the Latvian language groups had been assessed as sufficient for continuing their education at the level of basic education. This finding justifies the need for full transition, as of 1 September 2023, to the Latvian language at the pre-school level of education.

In May 2023, to obtain data on the outcomes of learning Latvian and identify opinions on the readiness of minority children to start learning in Grade 1 in Latvian, pre-school teachers were invited to participate in express-survey. Groups of minority children in Vidzeme and Zemgale had been, to a certain extent, prepared for the transition. 32 teachers of minority groups from other regions and Riga responded in the survey. It turned out that children had

been prepared to learn in Latvian in Grade 1 only in seven groups, teachers of 20 groups had informed that minority children would encounter difficulties because they were only partially ready to learn in Latvian. It is noteworthy that children from groups that were not prepared to learn in school in Latvian had used only the Russian language in daily life. Thus, these minority children had not been encouraged and accustomed to use the Latvian language in daily life.

Within the framework of educational system, such level of proficiency in the official language should be ensured also in private institutions of pre-school education that would allow the children to continue learning in Grade 1 successfully and become integrated in the Latvian society. Allegedly, this can be achieved only if the whole educational institution transitions to the Latvian language. In pre-school, the additional financing for assistants to teachers, granted by the Ministry of Education and Science, facilitates implementation of this transition.

At the court hearing, *Dr. habil. philol.* Dace Markus pointed out that the conducted research had included also private educational institutions. In practice, the bilingual model had not ensured sufficient proficiency in the official language because, often, the minority language had prevailed in daily life. Previously, very good and very poor results in the acquisition of the official language had been found both in State and private educational institutions.

Support by the family and the mastery of teachers are very important in language acquisition.

To assess the impact of the reform to the language of instruction in education, the State should conduct monitoring of the children's knowledge and the quality of teachers' work at least annually.

13. The summoned person – Associate Professor, Head of the Department of Preschool and Primary Education, Faculty of Psychology, Pedagogy and Art, the University of Latvia *Dr. paed.* Ineta Helmane – notes that the previous approach to minority educational programmes had not ensured sufficient proficiency in the Latvian language at the level of pre-school and basic education.

The study programme and teaching methodology of future pre-school teachers is said to be inappropriate for teaching the minority educatees in the official language.

In the transition from the minority educational programme to the interest-related programme, such aspects as preservation of cultural identity, knowledge of the language, pedagogical approach, educational curriculum and social integration should be taken into account. Children of pre-school and elementary school age usually are very interested in exploring the world, in games and acquisition of new knowledge, therefore interest-related educational programmes can be very effective. Cognitive development in this age is said to be linked to the ability to participate attentively and in a focused way in activities, to memorise new knowledge well, develop new ideas and think creatively.

At pre-school age, one to three lessons per week could be appropriate for mastering an interest-related educational programme, whereas at the age of basic education – three to five lessons per week. However, it should be also ensured that children would have sufficiently much time left for playing, homework and other activities. Not only the educational institution but also the child's parents should contribute significantly to upbringing and education of their child, *inter alia*, to the development of ethnic identity and language.

At the court hearing, *Dr. paed.* Ineta Helmane pointed out that interest-related education opened greater opportunities for creating exciting activities for children, as well as for highlighting the necessary curriculum. Teachers are offered courses on topics that are linked to the identity of minority children, *inter alia*, a study course highlighting the ethnic traditions and trends in a multicultural society.

14. The summoned person – Senior Researcher, Institute of Philosophy and Sociology, University of Latvia, Member of the Advisory Council on Minority Education, *Dr. soc.* Vladislavs Volkovs – notes that ethnic minorities contribute significantly to ensuring the diversity and stability of the Latvian civil society. However, issues that are mainly related to integration of the collective culture and linguistic identity of ethnic minorities in the Latvian

culture space have stayed unresolved. Private educational institutions, established by minority representatives, could be one among such channels of integration. The practice of private education, implemented in the languages of ethnic minorities, is said to comply with the European traditions.

Allegedly, transition to education only in Latvia has not been sufficiently substantiated and as the only argument proving the necessity for it is that it is impossible to ensure in minority schools that the Latvian language is mastered in full. However, the real problem, perhaps, is related to insufficient administration, the work of teachers in some educational institutions and those employees of the Ministry of Education and Science who had to monitor the quality of teaching subjects in Latvian.

Another reason for the negligent attitude towards private education of ethnic minorities is the lack of a close link between the institutions that make decisions on the full transition of private education to the Latvian language and the multiethnic civil society. The website of the Ministry of Education and Science shows that focus on the interests of ethnic minorities is rather low. There is not a single study that would reflect the Latvian society's wish to have private education provided only in the Latvian language. Moreover, the study of 2010, published on the webpage, had been based exactly upon values of bilingual education in minority schools. Namely, the high quality indicators of education, reached by minority schools, have been mentioned in the study "Analysis of the results of the last three years of centralised examinations and preparation for the transition to a single Latvian language examination in 2010". The social and political consequences that follow from the transition to education only in the official language in private educational institutions have not been assessed. It can be stated with certainty that the initiative to provide education only in Latvian in private educational institutions has not followed from communication with Latvia's diverse civil society.

At the court hearing, *Dr. soc.* Vladislavs Volkovs noted that the official language was not the only means for attaining democratic cohesion. The Ministry of Education and Science had been unable, over 30 years, to ensure quality Latvian language learning within the model of bilingual education.

Allegedly, three lessons allocated to the interest-related educational programme is too little for preserving the language, identity and culture of an ethnic minority. The model of bilingual education should be reinforced and improved.

15. The summoned person – *Dr. h. c., Assessor. jur., Dipl.-Pol. Egils Levits* – stated at the court hearing that the Convention on Minorities protected exactly minorities, not any person who lived in Latvia. Hence, the issue of the Applicants' belonging to national minorities is important.

The contested provisions are part of the reform to the language of instruction that has been implemented for a long time and is directed at creating a democratic cohesive society. The official language is said to belong to the non-amendable core of the Constitution, which even the legislator does not have the right to depart from. The official language is the pre-condition for ensuring that all those who belong to the Latvian nation could participate in the creation of common future or the democratic discourse and, accordingly, is the main element in creating a cohesive society.

Minority educatees learn Russian in their families from an early age. Later, the Russian language is partly learnt also at school. The Russian information space is said to be fully self-sufficient. Thus, the Russian identity is passed on from one generation to the next. Disbalance in the acquisition of the Latvian language can be identified, which is being decreased by this reform.

Article 13 of the Convention on Minorities may not lead to isolation because the State's task is to promote democratic cohesion. Until now, the State has not fulfilled this duty properly.

Respect for ethnic minorities, included in Article 14 of the Constitution, does not mean the right of ethnic minorities to their own, segregated system of educational institutions. Possibly, in its Judgement in case No. 2018-22-01, the Constitutional Court has set a higher standard than the one established in Article 14 of the Convention. The State has the right to amend this standard. Likewise, the State has the right to conclude an agreement with any state in the world in accordance with its political choice.

16. The summoned person – Professor at the University of Latvia, specialist in developmental psychology, *Dr. psych. Anika Miltuze* – points out that, pursuant to neuroscience research, educatees of pre-school age still have very plastic brain. To develop successfully, brain requires a diverse environment that allows for a variety of simulations. By combining the mandatory curriculum of the pre-school education and the interest-related education, the environment of an educatee is enriched. Manifold experience that an educatee may gain through interest-related education is said to be relevant at any age, not only at the pre-school age.

In pre-school age, an interest-related educational programme can be combined with the general programme of education. Acquisition of interest-related education in various stages of pre-school age does not leave a negative impact upon the educatee. However, emotionally favourable and safe environment should be ensured in interest-related education to make the educatee feel good. Respect for the biologically determined individual particularities of an educatee is of equal importance: interest-related education that allows physical activities would be appropriate for more active children, whereas gentler children would need calmer activities.

The structures of human brain that are responsible for language acquisition develop before the age of eighteen months. It is important for a child to hear a language already at infant age. Also after enrolling at an institution of pre-school education the development of the child's native language continues at home, through communication with the family. At a later age, it is possible to take academic courses to learn the native language.

Bilingual children, who grow up in diverse linguistic environments and develop different language codes, benefit. Research proves – the earlier educatees start learning several languages in diverse environments, the less resources are needed for the acquisition of each particular language. It has been concluded in studies that also children with development disorders, e.g., in the case of attention deficit with hyperactivity disorder, acquisition of several languages helps to decrease concentration difficulties. Bilingualism is said to develop management functions, which are related to attention retention.

It is very important for the educatee to feel safe. This sense of safety can be created also in non-verbal ways; for example, by taking the child in one's arms, cuddling and comforting the child. Language does not always have to be used for this to happen.

Activities in the respective language facilitate development of the language. Research shows that children learn languages faster if they are intermixed. It is important that a child associates a particular person with a particular language. Then it is easier for children to switch over to communication in the particular language. In the classes of interest-related education, changing the environment and the teacher, it is easier for the educatee to switch from one language to another.

In the case of normative development, the language, in which an individual support is provided to children, is not important for them. However, if the process of education at the pre-school educational institution is implemented in the official language then also support to educatees should be provided in the official language. At the early age, from eighteen months to three years, the child's communication with the teacher takes place, in any way, by using not so much the language but rather gestures, drawings and other methods. Academic learning of the language is impossible at this age. A child acquires the language by being in the environment of this language. Hence, educatees may learn their native language also during practical classes of interest-related education when background conversations in their native language can be heard.

The fact that the native language is not academically perfected could be a risk in the future.

17. The summoned person – the Latvian Trade Union of Education and Science Employees (LIZDA), in the period from 1 to 7 March 2024, had ascertained the teachers' opinion on the contested provisions. 346 teachers from educational institutions, established by local governments, had filled in the questionnaire.

The respondents had pointed out that teaching materials were available both in printed and digital form. However, they are scattered over various

websites, have not been systematised in accordance with the study programme and therefore rather long time has to be spent searching for these materials. These materials are not suitable for a particular lesson. Likewise, explanation of essential concepts in different subjects is not available. For some topics, teaching materials are not available at all, therefore, teachers either develop these themselves or procure from their colleagues. However, the games, developed by the Agency, are praised, in particular, for the stage of pre-school education. Other materials are obtained in courses of continuous education, experience-sharing seminars and webinars.

Provision of methodological help and methodological materials is said to be very poor and only one teaching and methodological material for transition to learning in the official language for Grades 1-3 in mathematics and natural sciences is available on the webpage of the National Centre for Education. Speech therapists complain about the lack of methodological materials for working with minority children who have sound pronunciation disorders but the corrections must be done in the Latvian language.

Teachers point to the impossibility of providing sufficient individual support during lessons since educatees have very different levels of proficiency in the Latvian language. Allegedly, it is impossible to implement teaching process in full while speaking with younger children only in the official language. There are also children who do not understand Latvian at all and, thus, it hinders the discharge of the teacher's duties. The shortage of teachers makes it difficult to provide adequate support for educatees in the pre-school stage.

Additional financing from the State budget is allocated for the remuneration of those teachers who are implementing educational programmes in that school year when the transition to teaching the curriculum in the official language takes place for those educatees who in the previous school year had been enrolled in the programme of minority education. At the same time, additional State budget financing is calculated for purchasing teaching aids.

At the court hearing, LIZDA stated that the transition to education in the official language was necessary. However, the reality had not been assessed in the adoption of the contested provisions, namely, that children in their daily life

in their families and among the people closest to them speak Russian. Therefore, the teacher is the one who must achieve quickly this transition to education in the official language. A longer transitional period would have allowed teachers to prepare better for this.

Teachers have had access to courses on how to work with children whose native language is not the official language. However, methodological materials of adequate quality with explanations on how to use the respective study aid to help a child master the Latvian language better are still not available.

Previously, teachers themselves had had major problems with their proficiency in the official language. There had been situations in practice where a child's parents purposefully refused to cooperate with teachers. Such parental attitude does not facilitate an educatee's possibilities for learning the official language. Part of teachers point out that if cooperation with parents is good and support staff are available mastering of the official language does not cause particular problems for the educatees.

Optional classes are part of formal education. These can be organised either before or after beginning of lessons. Due to their exclusivity, the costs related to maintenance of private educational institutions are much higher than the maintenance costs of State and local government educational institutions, and, accordingly, the proportion of the State financing is significantly smaller.

18. The summoned person – the Latvian Association of Local and Regional Governments – has provided information that decisions on implementing interest-related education in local governments are adopted in accordance with Para 10 of the Cabinet Regulation of 28 August 2011 No. 382 “Procedure for Financing Interest-Related Education”. The minimum number of educatees required to implement the programme must be determined by the local government, taking into account the demand. The curricula of the programmes, in turn, must be developed by teachers, taking into account the model programme of interest-related education in minority language and cultural history and the guidelines for the implementation thereof.

36 local governments had participated in the survey, organised by the Latvian Association of Local and Regional Governments, of which 19 had indicated that they implement interest-related education programmes in minority language and cultural history in institutions of general education. In these local governments, 3712 educatees belonging to the Russian minority, 15 educatees belonging to the Ukrainian minority, as well as 70 educatees belonging to other ethnic minorities acquire education at the level of pre-school education, whereas at the level of basic education – 7438 educatees belonging to the Russian minority, 284 educatees belonging to the Polish minority, 81 educatees belonging to the Ukrainian minority, as well as 547 educatees belonging to other ethnic minorities.

Three local governments (Bauska Region, Gulbene Region, Ropaži Region) have noted that they have received requests from private educational institutions regarding implementation of an interest-related educational programme in minority language and cultural history. Some local governments have stated that the issues regarding implementation of an interest-related education programme in minority language and cultural history are not relevant or that there is no such demand within the respective local government.

At the court hearing, the Latvian Association of Local and Regional Governments pointed out that a methodological centre had been established in the local government of the State City of Riga, which provides support not only at the level of basic school but also in the pre-school stage. In local governments, support for pre-school educational institutions and teachers is organised.

Local governments do not define the procedure, in which educational institutions must organise the interest-related minority educational programme. This procedure is said to depend on the educational programme, the schedule of lessons, agreement with teachers and parents. Local governments are not obliged to monitor how educational programmes are implemented by private educational institutions. The private educational institutions themselves should show interest in the implementation of an interest-related minority educational programme.

Allegedly, within the framework of the previous reform to the language of instruction, some educational institutions have chosen to ensure a larger part of curriculum in the official language than was required.

19. The summoned person – the Jewish Chabad Private Secondary School – points out that the quality learning the official language in the minority education programme at all levels of education is proven by the prizes won by pupils in contests, including contests in the Latvian language. The educational institution is attended not only by children from Latvia but also from the USA and Israel.

At the school, subjects of the Jewish cycle (except for Hebrew) are taught in the framework of optional subjects and interest-related educational programmes. However, the founders are elaborating an original programme for teaching subjects of this cycle in Hebrew, to include, later, at least a part of them in the basic programme as a separate subject or include in the subject of “Social Science”.

The aim of the Jewish Chabad Private Secondary School is to offer general education and promote respect for the way of life, traditions, culture and religion of the Jews, the historical ethnic minority of Latvia. It is inconceivable that this aim could be reached without using Hebrew in the study process. On the basis of Agreement between the Government of the Republic of Latvia and the Government of the State of Israel on Cooperation in the Fields of Education, Culture and Science, teachers and students from Israel permanently work at the school.

The right of private schools to choose the language of instruction, *inter alia*, the language of the ethnic minority, should be exercised in accordance with Article 91 of the Constitution, without differentiating between private institutions of minority education according to their affiliation with the languages of the European Union or other criteria. Allegedly, this right is not contrary to the requirement that the educatees at private educational institutions must master the official language in full, the proficiency in which is tested at

examinations, which have the same rules as those at State and local government educational institutions. The prohibition for private educational institutions to ensure the study process in the minority language applies not only to the Russian language but to all those languages that are not the languages of the Member States of the European Union and, partially, to those, with respect to which international agreements have not been concluded.

On the basis of the conclusions made by the Venice Commission and the Advisory Committee, one can subscribe to the opinion that the contested provisions are incompatible with Article 114 of the Constitution, insofar they apply to private institutions of general education, the founders of which are persons belonging to ethnic minorities.

20. The summoned person – association “Privātskola LATREIA” – underscores that its graduates continue to study successfully in higher educational institutions of Latvia. Hence, the system of bilingual education had been able to provide to educatees the required proficiency in the official language.

In planning the transition to education in the official language, teachers and assistants to teachers at elementary school had been chosen, appropriate methodology and the study aids needed for comprehensive process of education had been sought. However, there is a shortage of teachers who would be able to implement the study process in Latvian in full. The study aids for Grades 1, 4 and 7 had been ordered timely; however, the Latvian language text books for Grade 7 had not been available until November. Hence, the teachers had to create their own materials for work.

At the school year of 2023/ 2024, 39 educatees had started learning in the first Grade, of which 25 had been graduates from a minority pre-school, lacking basic proficiency in the official language.

The number of children who have learning disorders, mental development disorders and other health disorders is said to be growing. For many of these children it is very difficult to learn a new language or to process information that is provided in another language, not in their native language. Such learning

disorders as dyslexia or dysgraphia may develop also due to increased stress, e.g., if excessively high demands are set or inappropriate learning load is imposed upon a child when starting school.

Also educatees of Grades 4 and 7 are unable to acquire the curriculum due to the lack of study materials and overload. In creating the environment of the official language, the possibilities for the educatees to learn their native language properly are lost. Due to insufficient co-financing by the State, the optional classes are ensured by parents' expense.

At the court hearing, the private educational institution "LATREIA" pointed out that the State was offering a lot of materials; however, not all of them were suitable for quality work in various grades. The educational institution had developed its own teaching methodology because the one offered by the State was not compatible with its vision. At the private educational institution, children can receive individual approach and stay in a safe, comfortable environment. To facilitate learning of the official language, after-school classes are organised. There is a teacher's assistant in each class who supports children that are experiencing difficulties in this regard.

In view of the developments in the area of education, the educational institution had not expected that the previous reform to the language of instruction should be regarded as the last one.

The educational institution has created four classes per week in the interest-related educational programme in minority language and cultural history for Grade 1 and three classes per week in the interest-related educational programme for Grade 4 and Grade 7. Such allocation of classes is linked to the educatees' workload.

The educational institution is financing the interest-related educational programme itself because it has not received information from the local government about the possibility to receive financing. Since the parents of all educatees had agreed to learning the official language the educational institution has included these classes in the timetable of lessons. As out-of-class activities, the educational institution is promoting the learning of traditions and cultures,

for example, by celebrating the festivities that are characteristic for the ethnic minority.

The private educational institution is enrolling also such educatees belonging to ethnic minorities who have recently arrived in Latvia. In such a case, it is only logical that the examination is passed on the minimum level. Moreover, the educatees of Grade 9 who had followed a minority educational programme until 2022 do not know that there will be a unified examination.

The reform to the language of instruction has not had an adverse effect upon the number of educatees in the particular private educational institution. It has even increased and the demand is said to be higher than the possibilities of the educational institution to satisfy it. The educational institution had not felt that its existence had been jeopardised.

Looking from the children's perspective, maintaining of the bilingual process of education would have been advisable because it does not cause resistance among teenagers. The transition to education only in the official language should be organised in a more gradual way.

21. The summoned person – institution of pre-school education private nursery school “GALAKTIKA” – underscores that, in private institutions of pre-school education, the parents' should have more choice with respect to the language use compared to the local government institutions because the State co-financing constitutes only 1/ 64 of the necessary financing.

Most often, parents' choose one of the minority languages as the basic language for the child due to the child's particular sensitivity and the need to be in a smaller collective or situations where the family has chosen Latvia as a country of temporary residence.

The classes in interest-related education in minority language and cultural history are organised in three play lessons per week. These are organised at the end of the school day, thus, participation by the educatees is made difficult.

At the court hearing, the educational institution “GALAKTIKA” pointed out that, in some situations, the native language of a child, i.e., a language of an ethnic minority, must be used to calm down the child, although the legal

regulation does not allow it. If the teacher does not know the minority language than, in the respective situation, they would not be able to communicate effectively with the child. A methodology for solving such situations has not been developed.

Issues related to the consolidating the identity of ethnic minorities can be included in the daily learning process.

The educational institution had been able to prepare for the transition to education only in the official language. Teachers' assistants, as well as a speech therapist who provides outsourced services have been attracted for the acquisition of the official language. The speech therapist's services are provided both in Latvian and Russian. The number of educatees at the educational institution has not decreased because of the reform to the language of instruction. The educational institution conducts an annual self-assessment survey.

22. The summoned person – private institution of pre-school education “MAXVEL” – points out that three academic lessons per week are not enough for learning the native language, literature, art, music, as well as traditions in full. The requirement to ensure in private educational institutions the same study programme as in State and local government educational institutions may lead to closures of private educational institutions due to lack of demand.

In the survey that was organised at the beginning of 2023, the parents of learners had expressed the wish to have the learning process organised both in Latvian and in Russian, in equal amount.

To ensure that a child has better success in learning the Latvian language, their native language should be used. The age from three to seven years is the most important period for developing a child's ability to speak. If the particularities of this age are not respected then a fast transition to the official language might have an adverse impact upon the child's process of socialising and communication skills.

In practice, it is difficult to ensure the learning process only in Latvian because it is difficult for young children to switch over from speaking in their native language to a totally different language. There is a shortage of teachers for individualised and personalised acquisition of the official language. At the educational institution, there are learners endowed with good linguistic abilities, as well as such learners for whom the learning process, conducted in a language that is incomprehensible to them, causes great stress. Children until the age of seven have speech development problems. Very young children who have not reached even the age of two years and do not speak any language start attending the private educational institution. Therefore, the model of bilingual education would be the most compatible with a child's interests.

23. The summoned person – the Riga Ukrainian Secondary School – underscores that the language of an ethnic minority is the family's language, whereas, in educational institutions, persons who belong to ethnic minorities are given the possibility to safeguard and develop the singularity of their language and culture by participating in optional and interest-related classes, as well as school and out-of-school events.

The acquisition of the Ukrainian culture, ethnographic elements, history, geography and music is integrated into the lessons of home economics and technologies, history, geography and music, as well as in additional out-of-class activities in these subjects.

At the court hearing, the Riga Ukrainian Secondary School pointed out that private educational institutions had much greater possibilities to choose the ways for facilitating the acquisition of the official language among their educatees. The educational institution, on its own initiative, had already introduced acquisition of the educational curricula only in the official language before the contested provisions were adopted.

The educational institution is developing extensive possibilities for interest-related education and summer camps. Optional classes can be organised also in the morning before lessons.

To ensure that educatees master the official language as well as possible it is important to start learning it already at the pre-school age. It is not always necessary to use language to calm down children. Parents' motivation plays an important role in the process of learning the official language among educatees.

Sufficiently good proficiency in the official language of the educatees can be ensured also in a bilingual environment.

24. The summoned person – private institution of pre-school education “Maza Rasiņa” – pointed out at the court hearing that it had organised, on the basis of self-financing, an interest-related educational programme “Learning Minority Language and Culture through Fine Arts”. It is implemented in the form of pottery classes for the youngest children and in the form of theatre classes for older children. Folk songs are also sung. The cognitive abilities of the youngest children and the importance of training the fine motor skills in brain development had been taken into consideration in elaborating the interest-related minority educational programme. The classes are mainly focused on learning the minority culture.

The duration of classes is three hours. Until now, the institution of pre-school education had held that this was the only possible variant allowing the implementation of interested-related educational programme if the entire mandatory curriculum must be learnt in the official language. Understanding of the time to be allocated for the interest-related minority educational programme had developed during the conferences for teachers, as well as by taking into account the casuistic regulation on other aspects of the functioning of a pre-school educational institution. The development of a programme for the whole group of children had been a challenge for the institution of pre-school education.

The mandatory curriculum is learnt at the beginning of the day and the classes of interest-related education follow only after that. Allegedly, three hours is not enough for learning the native language and culture. Likewise, classes of interest-related education are not suitable for teaching children because individual work with a child is not possible during these. In the age from eighteen

months to three years a child hears the native language in the background; however, they do not learn to speak, to express their thought, needs, emotions in the native language. This means that, in this regard, parents should continue working with the child but it is impossible during work days. This is said to be exactly the reason why parents have initially delegated the responsibility for educating and upbringing the child, *inter alia*, ensuring native language skills, to an institution of pre-school education.

The solution where the entire educational process from the age of eighteen months to three years would be ensured in the child's native language would be more favourable for children. It is important to earn the child's trust since it would create the feeling that institution of pre-school education replaces the parents. More extensive use of the official language would be admissible in the age group over three years but, in the second part of the day, classes of interest-related education in Russian could take place for four hours.

Following the adoption of the contested provisions, allegedly, it often happens that children do not understand what the teacher is saying, in particular, if the curriculum to be learnt is more complex. Teachers do not have enough time to provide longer explanations in the official language. As the result, children often do not learn the particular curriculum. Likewise, children who do not understand what the teacher is saying lose the contact with the teacher and, thus, also attention. As the consequence to this, the child becomes undisciplined, loses motivation to learn and becomes marginalised. Lack of basic skills makes it more difficult to acquire the official language.

If a teacher does not succeed in calming down a crying child by using other pedagogical methods the child's native language is also used as the most effective means. Then the teacher can return sooner to working with the whole group of educatees.

The institution of pre-school education must ensure that the necessary methodological materials for teaching the minority language and culture are prepared. The methodological materials prepared by the State are said to be scientifically unfounded. Methodological materials for children with learning disorders are lacking.

The State co-finances pre-school education. Parents make additional payments for the classes for learning the native language. At the level of pre-school education, a specialist has been involved. The possibility to attend classes in the interest-related education has been ensured also to these educatees. Approximately 30 percent of the children in the educational institution have special needs.

25. The summoned person – private institution of pre-school education “BONA FAVOLA” – had received, in September of 2023, a collective submission from the educatees’ parents requesting that classes in the native language were organised for the children. Such classes are taking place once per week in the second part of the day. For children from the age of three to five years the duration of the class is 60 minutes, whereas for children over the age of five the class lasts for 80 minutes. Parents do not have to pay for these classes.

During the school year, the pedagogical staff of the institution had found that the transition to education in the official language was difficult for children. There are also children with speech and learning disorders in the institution. Transition to education in the official language requires more individual solutions and activities envisaged exactly for such children.

The Findings

26. If the compliance of several legal provisions with several superior legal provisions is contested then the Constitutional Court, considering the merits of the case, must determine the most effective approach to the compatibility review (*see, for example, Judgement by the Constitutional Court of 15 May 2020 in Case No. 2019-17-05, Para 13*).

Section 9 (1¹) of Education Law provides that, in private educational institutions, basic and secondary general education and vocational education in

the State is acquired in the official language. Section 1 of Amendments of 2022 deleted Para 2 of Section 9 (2) of Education Law, which envisaged the possibility to acquire education at a private educational institution not in the official language but in another language in a minority educational programme at the level of pre-school and basic education, Section 5 has deleted Para 1 of Section 38 (2) of Education Law, which envisaged minority educational programmes as a special type of educational programmes, Section 6 deleted Section 41 of Education Law, which regulated the implementation of minority educational programmes, whereas Section 12 of Amendments of 2022 introduced Para 102 in the Transitional Provisions of Education Law, Sub-para 1 of which defines the rules for entering into effect of Section 6 of these Amendments. Thus, the contested provisions, in their conjunction, constitute legal regulation, which excludes, from 1 September 2023, the possibility to acquire general education in the framework of minority educational programmes in private educational institutions at the level of pre-school education and in certain forms at the level of basic education, i.e., Grades 1, 4 and 7. Hence, in the present case, the compliance of the contested provisions as united regulation with the superior legal provisions must be examined.

At the court hearing, the *Saeima's* representative requested the Constitutional Court to terminate legal proceedings with respect to Section 9 (1¹) of Education Law because the claim regarding the constitutionality of this provision should be regarded as already adjudicated (*see Case Materials, Vol. 3, pp. 75, 76 and 129*). However, the Constitutional Court reviewed the provision referred to in case No. 2018-22-01 in conjunction with those provisions of Education Law that regulated the proportion of language use in the minority educational programmes that were implemented within the system of formal education. Thus, the constitutionality of Section 9 (1¹) of Education Law in conjunction with those legal provisions that have been contested in the present case has not been reviewed. Hence, this request by the *Saeima* shall be dismissed.

27. At the court hearing, the representative of the *Saeima* requested the Constitutional Court to assess whether the Applicants belonged to any of the

ethnic minorities that had historically resided in Latvia and, thus, whether Article 14 of the Constitution and the Convention on Minorities were applicable to them (*see Case Materials, Vol. 3, p. 129*). The *Saeima* holds that the Applicants' belonging to the Russian ethnic minority does not follow from the materials in the case, *inter alia*, the data from the Register of Natural Persons. According to the entries made in the Register of Civil Status Acts, Dana Džibuti belongs to the Georgian nationality. Whereas the nationality of Dominiks Džibuti has not been indicated in the Register of Civil Status Acts, thus, the parents of the child, on the basis of an agreement, had decided not to associate a child with a particular ethnicity. Thus, there are grounds to question whether the contested provisions infringe upon the Applicants' fundamental rights that follow from Article 114 of the Constitution and the Convention on at all Minorities. The Applicants, however, stated that they self-identified as belonging to the Russian minority and that they had family ties to this ethnic minority (*see Case Materials, Vol. 5, p. 140*).

The status of an ethnic minority should be understood in accordance with Article 114 of the Constitution and the Convention on Minorities (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.2*).

Pursuant to Section 2 of the law "On the Framework Convention on the Protection of National Minorities", the term "national minorities", which has not been defined in the Convention on Minorities, in the meaning of this Convention denotes citizens of Latvia who are culturally, religiously or linguistically different from Latvians, who have traditionally lived in Latvia for generations and consider themselves belonging to the Latvian State and society, wish to preserve and develop their culture, religion or language (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 22*).

In clarifying whether a person can be considered as belonging to an ethnic minority, the person's subjective choice and the wish to preserve and develop the culture, religion or language of their ethnic minority are essential (*see: Advisory Committee on the Framework Convention for the Protection of*

National Minorities, “*The Framework Convention: a key tool to managing diversity through minority rights*”, 27 May 2016, ACFC/56DOC(2016)001, paras 9–11). However, such self-identification cannot be based on arbitrary considerations. A person’s subjective choice should be inseparably linked to objective criteria that characterise a person’s identity (*see: Council of Europe, “Explanatory Report to the Framework Convention for the Protection of National Minorities”, 1 February 1995, Para. 35*). Merely the fact that a person identifies with a certain ethnic minority does not mean that they should be recognised as belonging to this ethnic minority, unless it is proven by objective criteria.

At the court hearing, the Applicant’s legal representative – their father – pointed to his family’s links with the Russian nationality, i.e., that his father and, accordingly, the Applicants’ grandfather had belonged to this ethnic minority (*see Case Materials, Vol. 5, p. 140*). In the birth certificate of the applicant Dominiks Džibuti, his mother’s nationality is indicated as Russian (*see Case Materials, Vol. 1, P. 49*). At the court hearing, the Applicants’ father emphasised that the family spoke Russian (*see Case Materials, Vol. 5, p. 140*). The Applicants’ wish to maintain the family ties and to belong to the ethnic minority of Russians is proven also by the fact that the Applicants have been acquiring education for a long time in private institutions of minority education, which ensured acquisition of the Russian language, as well as strengthening of the Russian ethnical and cultural particularity. Hence, a totality of several circumstances prove the Applicants’ ties with the Russian minority.

The Constitutional Court does not have at its disposal any other considerations that would make it contest the substantiation for the Applicants’ self-identification. Moreover, a case, in which the Applicant Dana Džibuti already defended her rights, included in Article 114 of the Constitution, has already been reviewed by the Constitutional Court (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01*). Likewise, the case regarding the rights of Dana Džibuti to acquire education at such educational institution where a minority education programme is implemented has been reviewed by the European Court of Human Rights (*see Judgement by*

the European Court of Human Rights of 16 November 2023 in Case “Džibuti and Others v. Latvia”, Application No. 225/20 and others).

Hence, in the given circumstances, the Applicants shall be recognised as persons who have the fundamental rights, included in Article 114 of the Constitution.

28. In view of the content of the contested provisions, the facts of the case and the reasoning provided in the application regarding the alleged incompatibility of the contested provisions with the Constitution, it can be concluded that the basic matter to be reviewed in the case pertains to the right of persons who belong to ethnic minorities to acquire general education in private institutions of minority education at the levels of pre-school and basic education and to learn, preserve and develop their language, as well as ethnic and cultural singularity.

Hence, first and foremost, the compliance of the contested provisions with Article 114 and the first sentence of Article 112 of the Constitution in their conjunction needs to be reviewed, following that – compliance with the principle of protection for legitimate expectations included in Article 1 of the Constitution. Article 114 of the Constitution provides: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.”

29. Article 114 of the Constitution comprises not only a person’s right to preserve their language and culture but also a collective right with the common aim of ensuring the preservation and development of minority identity, since a person belonging to an ethnic minority may preserve their identity together with other persons belonging to the respective ethnic minority (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 23*). Pursuant to Article 114 of the Constitution, the State is obliged to respect and guarantee the rights of persons belonging to ethnic minorities to acquire, preserve and develop their language, as well as ethnic and cultural singularity (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.2.*).

The content of the rights, included in Article 114 of the Constitution should be revealed in conjunction with other constitutional provisions and international documents in the area of minority protection, binding upon Latvia, in particular, the Convention on Minorities.

The first part of Article 13 of the Convention on Minorities envisages the right of persons belonging to ethnic minorities to establish and manage private educational institutions and training.

The State's obligation to ensure the right of persons belonging to ethnic minorities to acquire, preserve and develop, in the process of education, their language, as well as ethnic and cultural singularity has been envisaged also in other international legal acts, binding upon Latvia. Article 30 of the Convention on the Rights of a Child defines the rights of children belonging to ethnic minorities to practice and use their native language. The third and the fourth part of Article 13 of the International Covenant on Economic, Social and Cultural Rights envisages persons' rights to establish freely private educational institutions, as well as the parents' right to choose that their children would be educated in private educational institutions, insofar this private educational institutions comply with the minimal requirements defined by the State. Pursuant to the first part of Article 5 of the Convention against Discrimination in Education, the State must recognise the right of persons belonging to ethnic minorities to implement educational measures, organised by themselves, which comprise maintenance of private educational institutions and, depending upon the educational policy of each State, also using the minority language in the process of education, abiding by the standards defined by the State.

The right to education is included in the first sentence of Article 112 of the Constitution. In difference to the second sentence of Article 112 of the Constitution, which is applicable to the basic and secondary education, the first sentence of this Article establishes the basic right to acquire education in a broader understanding of this right and is applicable to educational programmes of all levels and types (*compare, see Judgement by the Constitutional Court of 6 May 2011 in Case No. 2010-57-03, Para 11.1.*). Thus, the right to education covers the whole process of education and implementation thereof, *inter alia*, in

accordance with the educational programmes developed by the State. If the State, within the limits of its discretion, develops such programmes and regulates the implementation thereof, they must conform to the State's obligations, included in Article 112 of the Constitution.

The right to education, included in the first sentence of Article 112 of the Constitution, may be exercised in the educational process not only in State and local government educational institutions but also in private educational institutions. Thus, also in the process of education implemented by private institutions of minority education, i.e., in their activities and in the acquisition of education in such educational institutions, both the right included in Article 114 and the one included in the first sentence of Article 112 of the Constitution are exercised (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.2.*).

The right of persons belonging to ethnic minorities to establish and manage their educational institutions comprise educational institutions that implement various educational programmes. Persons belonging to ethnic minorities have the right to establish institutions of informal education, e.g., summer schools and Sunday schools. Likewise, persons belonging to ethnic minorities who wish to acquire, preserve and develop the minority language, as well as ethnic and cultural singularity, have the right, complying with the national legal regulation, to establish and manage such educational institutions that ensure also the acquisition of general education.

Hence, the right of persons belonging to ethnic minorities to establish and manage such educational institutions, the process of education implemented therein, ensures the acquisition of general education as well as preservation and development of the ethnic and cultural singularity, as well as the right of persons belonging to ethnic minorities to acquire education in private institutions of minority education follow from Article 114 in conjunction with Article 112 of the Constitution.

29.1. A democratic state governed by the rule of law is obliged to ensure that the rights of every person are respected and to create harmonious legal framework for the development of a free, educated personality. The right

included in Article 114 of the Constitution is one element of this framework, which needs to be balanced with the shared values of society (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.3.*).

The right to education is a right that must be regulated by the State (*see Judgement by the European Court of Human Rights of 23 July 1968 in Case ““Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium”, Application No. 1474/62 and others, Para 5 of Part I B*). The State must establish such legal regulation that allows reaching all aims of education, conforming with the level and type of education.

The Constitutional Court has recognised the aim of the Latvian educational system to ensure to every resident of Latvia the possibility to develop their mental and physical potential to grow into an independent and developed personality, a member of the democratic state and society of Latvia as conforming not only with the interests of educatees themselves but also with the interests of society in general (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20, and Judgement of 21 December 2017 in Case No. 2017-03-01, Para 13.1.*). Primarily, the attainment of this aim is ensured by the educatee acquiring general education. General education is implemented at the levels of pre-school, basic and secondary education.

General education must be implemented in accordance with the State standards of education – regulations on the curriculum, teaching methods, process and the frameworks of discretion granted to educational institutions. The Guidelines for Pre-school Education set out the compulsory curriculum of pre-school education, and the State Standard for Basic Education sets out the compulsory curriculum of basic education. Additionally, the acquisition of general education, its curriculum and organisation in accordance with the type and level, as well as the target group of education are determined the programmes of general education and subject programmes in general education. The aims and objectives for implementing an education programme, the study curriculum and the planned outcomes in the acquisition thereof in an area of

learning or a part of it are determined in the programme of general education, in accordance with Education Law, Cabinet regulations and the national standard of general education of Guidelines for Pre-school Education, which regulate also other issues related to ensuring of education. The State standard of general education is mandatory for everyone who develops and implements programmes of general education, except the programmes of pre-school education, in the development of which Guidelines for Pre-school Education are mandatory. An educational institution may implement only licenced programmes of general education.

The State should form a system of education that is able to ensure the standard of education defined by the State, irrespective of whether the education process takes place in State or private educational institutions. Therefore, the State is obliged to apply Guidelines for Pre-school Education and the State standard of general education to both State and local government, as well as private educational institutions and recognise only such education, acquired in private educational institutions, which meets such requirements (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.3.*). Also the discretion granted by the Convention on Minorities to States, in embodying the principles defined therein, manifests itself, *inter alia*, in the forms of supervision, determined by the State, and standards for the curriculum of education.

The basic task of an institution of general education is to implement programmes of general education. Thus, if persons belonging to national minorities wish to establish and manage private educational institutions, the education process that is implemented therein includes the acquisition of general education, as well as acquisition, preservation and development of the minority language and ethnic and cultural singularity, or wish to acquire education in such an institution, then the implementation of the programme of general education in such educational institutions must comply with the established legal regulation.

The language of an instruction is an essential element in the implementation of general education and the State has the right to regulate its use.

29.2. The process of education in educational institutions, in particular, in private educational institutions, requires complex examination. It covers both the teaching and the upbringing work and is implemented in form of various educational programmes. The programme of general education is only one among such programmes. Presently, the purpose of educational institutions is to develop the ability of educatees to engage in life-long learning, to think and act in various situations, to live in a diverse world as an active, responsible citizen, and there are many ways for reaching this aim, integrating and linking various educational programmes and the process of informal communication. *Inter alia*, educational institutions that implement programmes of general education have the right to implement interest-related educational programmes without obtaining a licence (*see Section 47 (2) of Education Law*).

Likewise, the organisational and methodological freedom that follows from the autonomy of private educational institutions is essential in organising the process of education. Educational institutions are independent in developing and implementing educational programmes, choosing employees, in their financial, business and other activities, pursuant to Education Law and other legal acts (*see Section 28 of Education Law*). Private educational institutions, *inter alia*, educational institutions established by persons belonging to ethnic minorities, in the implementation of educational programmes, may use teaching methods of their own choice and organise the study process themselves, insofar it complies with regulatory legal acts.

Hence, it can be concluded that the activities of a private educational institution in the implementation of educational process are to be seen as a multifactorial system and the provision of general education would be only one of the aspects in these activities. Regulation on the activities of private educational institutions, in general, grants them relatively large discretion, but it is narrowed by the obligation to comply with the State standards, including the

Guidelines for Pre-school Education and the State standard for basic education, linked to the willingness of educational institutions to provide general education.

In regulating the language use in the process of general education at the level of pre-school and basic education in private educational institutions, the State restricts the right of persons belonging to ethnic minorities to acquire, in the educational process in private institutions of minority education, general education, as well as acquire, preserve and develop the language, culture and ethnic singularity of an ethnic minority.

Hence, the contested provisions restrict the Applicants' fundamental rights, which follow from Article 114 of the Constitution in conjunction with the first sentence of Article 112 of the Constitution.

30. The *Saeima*, the Ministry of Education and Science and other summoned persons have pointed out that the necessity for adopting the contested provisions, as well as the reform to the language of instruction in education in broader sense follows from, *inter alia*, consequences of the Soviet occupation and should be examined in this context (*see Case Materials, Vol. 1, pp. 70–77, Vol. 3, pp. 2 and 145, Vol. 5, pp. 71 and 87*).

The special circumstances that have occurred due to the prolonged occupation and russification of the State have already been analysed in the Constitutional Court's judicature (*see Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 1 and 2 of the Findings, and Judgement of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*).

30.1. At the beginning of the 20th century, representatives of various ethnicities lived in Latvia, *inter alia*, Russians, Jews, Baltic Germans, Poles, Belarusians, Lithuanians and others and they constituted approximately one-fourth of the entire population of the State (*see: Bleiere D. u. c. Latvijas vēsture. 20. gadsimts. Rīga: Jumava, 2005, 185. lpp.; Švābe A. (red.) Latvju enciklopēdija. Otrais sējums. Stokholma: Trīs zvaigznes, 1950–1951, faksimilizdevums. Rīga: Antēra, 2005, 1638. lpp.*).

The cultures of Latvian ethnic minorities began their unique path of development after 18 November 1918 when ethnocultural communities became

minorities and the residents belonging to them – citizens of Latvia (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 22; see also: Dribins L., Goldmanis J. Mazākumtautību devums Latvijas Republikas kultūrā. Grām.: Stradiņš J. (red.) Latvieši un Latvija: akadēmiskie raksti. IV sējums “Latvijas kultūra, izglītība, zinātne”. Rīga: Latvijas Zinātņu akadēmija, 2013, 231. lpp.*). The legal regulation that was adopted after the proclamation of Latvia’s independence ensured the right of ethnic minorities to create their own school administration and the financial support of the State and local governments to minority educational institutions (*see: Bleiere D. u. c. Latvijas vēsture. 20. gadsimts. Rīga: Jumava, 2005, 186. lpp.*). In the school year of 1933/1934, 38 minority gymnasia and 555 basic schools functioned in Latvia (*see: Butulis I., Zunda A. Latvijas vēsture. Labots un papildināts trešais izdevums. Rīga: Jumava, 2019, 94. lpp.*).

Under the impact of the Second World War and two successive totalitarian occupational regimes Latvia's ethnic composition changed significantly. Representatives of all ethnic groups suffered from the repressive politics of both regimes. As the result of warfare, repressions and emigration, in the period from 1940 to 1959, Latvia lost, in total, 325 thousand residents of all ethnicities, 267 thousand Latvians among them (*see: Bleiere D. u. c. Latvijas vēsture. Latvijas vēsture. 20. gadsimts. Rīga: Jumava, 2005, 363. lpp.*).

During the period of occupation by the USSR, the proportions in the ethnic composition of Latvia’s population changed mainly due to the fast inflow of residents from other territories of the USSR, which was facilitated both by the targeted policy of the occupational power and socialist industrialisation, as well as the choice made by the military staff of the armed forces of the USSR or internal army to settle for residence in the Republic of Latvia after demobilization, and other factors (*compare, see ibid. p. 364*). It has been recognised that Latvia’s situation had been unique even on the scale of whole Europe because it is hard to find another state, which, within a comparatively very short period of time, had experienced so massive influx of immigrants (*Ibid.*). During the same period, immigration occurred also in many other Western European States, however, in difference to Latvia, with the consent of

these states. In this regard, there was one more significant difference: the governments of Western European states took measures to achieve integration of immigrants, whereas there was no targeted integration of the Soviet immigrants in the Latvian society (*compare, see Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 1 of the Findings*). Integration did not happen also because the territory of the State of Latvia as the subject of international law and part of inhabitants were under the unlawful occupational power of the USSR but the activities of institutions of State power were limited.

In total, approximately four million people came to Latvia in the post-war years (*Ibid., p. 365*). At the same time, the Second World War and the repressions that followed made the Latvian demographic trends even worse and, judging by the absolute increase in 1959-1988, Latvians ranked last among the title nations of states that had been occupied by the USSR (*Ibid., p. 367*). Hence, in this period, the proportion of Latvians in Latvia had decreased from almost 80 percent before the Second World War to 52 percent in 1989 (*Ibid., p. 364*). In 1989, Latvians constituted the minority in all largest cities of the State (*Ibid., p. 365*). In cities, the proportion of other ethnicities amounted to 56 percent, and even more in Riga – 63.5 percent, i.e., Latvians were the minority there (*see: Eglīte P. Padomju okupācijas režīms Baltijā 1944.–1959. gadā: politika un tās sekas. Latvijas Vēstnesis, 20.06.2002., Nr. 93, ar atsauci uz Latvijas 2000. gada tautas skaitīšanas rezultātiem*).

30.2. The language use gained relevance because of the policy of migration and russification, facilitated by the occupational power of the USSR. Although there were representatives of almost all ethnicities of the USSR among foreigners, representatives of the Russian ethnicity dominated: in 1989, they constituted 70.8 percent of all foreigners and representatives of many other ethnicities recognised Russian as their native language (*see: Eglīte P. Padomju okupācijas režīms Baltijā 1944.–1959. gadā: politika un tās sekas. Latvijas Vēstnesis, 20.06.2002., Nr. 93; see also Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*). This can be explained, *inter alia*, by the fact that, in some settlements and workplaces, there were too

few representatives of the users of smaller languages of ethnic minorities who had come to Latvia to form their own ethnic communities. Whereas the representatives of the Russian ethnicity who had immigrated usually were among sufficiently large community of their compatriots or at least among people who knew Russian (*see: Eglīte P. Padomju okupācijas režīms Baltijā 1944.–1959. gadā: politika un tās sekas. Latvijas Vēstnesis, 20.06.2002., Nr. 93*). The issue of communication was solved by implementing general russification, allowing to use Russian without any restrictions in daily communication and imposing its use in State institutions (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*).

During the period of occupation, the system of education was used as the main instrument for ethnic assimilation. Russification of the educational process manifested itself as establishment of dual-stream educational institutions, which, essentially, meant segregation: alongside educational institutions that provided education in the Latvian language also educational institutions with Russian as the language of instruction were established (*compare, see Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 1 of the Findings*). Minority schools were abolished.

Considering the impact left by the policy of Russification, in occupied Latvia in 1970s, 85 percent of the children who were neither Latvians nor Russians attended educational institutions with Russian as the language of instruction but only 15 percent – educational institutions with Latvian as the language of instruction (*compare, see Judgement by the Constitutional Court of 13 May 2005 in Case No. 2004-18-0106, Para 1 and 2 of the Findings*). Moreover, the requirement to learn the Russian language in schools with Latvian as the language of instruction was reinforced (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*).

At the time of the census of 1989, in Latvia only 27.1 percent of Poles still knew their national language, 22.5 percent of Jews could still speak Yiddish, 32.2 percent of Byelorussians and 45.9 of Ukrainians still used their national language in their families (*see: Dribins L. Latvijas Nacionālo minoritāšu historiogrāfija atjaunotajā Latvijas Republikā 1990.–2008. gadā. Latvijas*

vēstures institūta žurnāls Nr. 1(70), 2009, 95. lpp., ar atsauci uz tautas skaitīšanas datiem). Namely, as the result of assimilation, ethnic minorities had lost their identity of ethnic minorities. Pursuant to the data of the same census of 1989, 22 percent of Russians living in Latvia and 10–64 percent of the representatives of other ethnicities admitted knowing the Latvian language (*see: Eglīte P. Padomju okupācijas režīms Baltijā 1944.–1959. gadā: politika un tās sekas. Latvijas Vēstnesis, 20.06.2002., Nr. 93, with reference to: Eglīte P. Iedzīvotāju ataudzes etniskie aspekti Latvijā. LPSR ZA Vēstis, 1991, Nr. 2 (523), 23.–33. lpp.*). Even 10 years after the occupation had ended, 50.2 of those belonging to other ethnicities or 21 percent of all population, according to their self-assessment, were not proficient in the official language (*Ibid., with reference to: Latvijas 2000. gada tautas skaitīšanas rezultāti. Rīga: Centrālā statistikas pārvalde, 2002, 145.–147. lpp.*).

The consequence of occupation is a burden that still has unfair impact on the entire society. These consequences are still felt, *inter alia*, also with respect to education and language.

30.3. Already since 1991, a targeted reform of the system of dual-stream educational institutions, created as the result of the policy of russification, is implemented.

In 1991, Section 5 of Education Law of the Republic of Latvia provided that the right to acquire education in the official language was guaranteed in the Republic of Latvia and, thus, all educatees were granted the right to learn in Latvian. In 1995, it was provided that in schools of general education where the language of instruction was not Latvian, in Grades 1–9 at least two subjects and in Grades 10–12 at least three subjects had to be taught in the official language (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20.2.*).

The new Education Law was adopted in 1998, which started abolishing segregation of educational institutions and envisaged establishment of a united system of education (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20.2., and Judgement of 13 May 2005 in Case No. 2004-18-0106, Para 3 of the Findings*). Section 9 (1) of this law defined the

general principle that education in State and local government educational institutions could be acquired in the official language but Para 2 of the second part of this Section provided that education in another language could be acquired in State and local government educational institutions that implemented programmes of minority education (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20.2.*).

During the next stage in the reform to the language of instruction, it was provided that, from 1 September 2004, in State and local government institutions of secondary education, which implemented the programme of minority education, starting from Grade 10, the acquisition of general education in the official language should be ensured in at least three-fifths of the total workload of lessons, including foreign languages, as well as acquisition of the minority language and curriculum that was related to the identity and culture was ensured in the minority language (*see Amendment of 5 February 2004 to Sub-para 3 of Para 9 in Transitional Provisions of Education Law and Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20.2.*).

Beginning from the school year of 2008/2009, the requirement that in the programmes of minority education in secondary schools no less than five subjects, excluding the Latvian language and literature, every school year had to be taught in Latvian entered into effect (*see Cabinet Regulation No. 715 of 2 September 2008 “Regulations Regarding the State General Secondary Education Standard and Model General Secondary Education Programmes”*).

In the period from 2008 until 2015, the situation of the official language was monitored, assessing also the impact of the reform to the language of instruction on the dynamics in the proficiency in the official language, the quality of education and other indicators (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 20.2.*).

It is concluded in Guidelines on National Identity, Civil Society and Integration 2012-2018 that, in Latvia, due to the large Russian speaking immigrant community, which formed during the period when Latvia was occupied, features of two-community State still can be observed: separate information spaces, divisions in the political environment according to ethnic

features, different social memories, linguistic separation in workplaces, schools, nursery schools (*see: Guidelines on National Identity, Civil Society and Integration 2012-201. Rīga, 2012, p. 8.. Available: km.gov.lv*).

In 2018, continuing to strengthen the official language as the language of instruction in education, it was provided that also in private educational institutions general education and vocational education at the level of basic and secondary education had to be acquired in the official language. Pursuant to this legal regulation, in programmes of minority education, from Grade 1 to Grade 6, acquisition of the study curriculum in the official language had to be ensured in the amount of at least 50 percent, whereas in Grades 7 to 9, in the amount of at least 80 percent of the total annual workload, including foreign languages (*see Sections 1 and 3 of the law of 22 March 2018 “Amendments to Education Law*).

In 2022, 24 percent of all educatees acquired general education in the framework of programmes of pre-school minority education and programmes of basic minority education (*see Annotation to draft law No. 1519/Lp13 “Amendments to Education Law”*).

30.4. Already in its judgement in Case No. 2018-12-01 in 2019, the Constitutional Court established that the Russian language was still used very extensively in Latvia. It was recognised in the respective case that the Russian language was available in movie theatres and television broadcasts, the content of many mass media was still predominantly produced in Russian, also many press publications were available only in Russian. *Inter alia*, the Russian language in Latvia was characterised as self-sufficient (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*).

It was found in Guidelines on the Official Language for 2021–2027, which were adopted in 2021, that, in the context of European states, the consequences of the Soviet occupation still influenced the sociolinguistic situation and, hence, the situation of the official language in Latvia (*see the Cabinet’s Order No. 602 of 25 August 2021 “On Guidelines on the Official Language for 2021–2027”*). Alongside Latvian, the Russian language is extensively used in the public space, this impacts the rights and possibilities of those persons who are not proficient in this language. Some facts indicate that

adolescents who do not know Russian and do not belong to the respective ethnic minority are discriminated in society, in particular, in the labour market. For example, it was established in the Agency's study of 2020 that more than half or 55 percent of young Latvians, in the age group from 19 to 34 years, had experienced a situation where the lack of proficiency in the Russian language had left adverse impact on the possibility to get a job (*see Sociolinguistic study by the Latvian Language Agency "The Linguistic Situation in Latvia: 2016–2020", p. 116*). Thus, the consequences of insufficient proficiency in the official language, affecting persons belonging to ethnic minorities, are still observed. The persons who speak Russian in their families have mentioned most frequently the insufficient Latvian language skills as a factor with adverse impact of their employment (*see Ibid.*). Likewise, the mid-term assessment of National Development Plan for 2014–2020 revealed that unequal possibilities for participation continued to be a significant obstacle to civic participation, which, *inter alia*, was linked to insufficient proficiency in the official language (*see the Cabinet's Order No. 72 of 5 February 021 "On Guidelines for the Development of a Cohesive and Civically Active Society for 2021-202"*).

Thus, currently, the Constitutional Court has no grounds for making different conclusions regarding the use of the Russian language in Latvia. Moreover, the Constitutional Court has recognised that, also in 2023, the position of the Latvian language in several sociolinguistic functions is not compatible with its status of the official language and this can be explained, mainly, by the linguistic self-sufficiency of Russian speakers and the prevalence of the Russian language in information space (*see Judgement by the Constitutional Court of 9 February 2023 in Case No. 2020-33-01, Para 35.1.*).

Finally, the Constitutional Court takes into account the arguments presented by the *Saeima* regarding the war that Russia is waging against Ukraine and spread of disinformation activities in the Russian language information space. The persons to whom, due to the lack of proficiency in the official language, only the Russian-language information space is accessible, are subject to the impact of this disinformation and self-segregation that follows from it.

Hence, in reviewing the contested provisions, Latvia's special circumstances that have developed due to the prolonged occupation and russification of the State should be taken into consideration, as well as the connection of them to the current situation in the use of the official language, which is of particularly great importance in the current geopolitical situation.

31. In assessing the constitutionality of a restriction on fundamental rights, it must be verified, first and foremost, whether the restriction has been established by a legal provision, adopted in due procedure. The restriction on fundamental rights should have been established in such legislative procedure that complies with the principle of good legislation (*see Judgement by the Constitutional Court of 15 February 2024 in Case No. 2023-04-0106, Para 17*).

31.1. The draft law "Amendments to Education Law" was submitted to the *Saeima* by the Cabinet on 8 June 2022. The draft law was discussed in three readings and adopted at the sitting of the *Saeima* on 29 September 2022. The Amendments of 2022 were promulgated on 11 October 2022 in the official publication "Latvijas Vēstnesis" No. 197 and entered into effect on 25 October 2022.

The Constitutional Court does not doubt that the contested provisions had been adopted and promulgated in the procedure set out in the Constitution and the Rules of Procedure of the *Saeima* and are accessible in compliance with statutory requirements. Likewise, the Constitutional Court does not doubt that the contested provisions have been worded with sufficient clarity, allowing a person to understand their content and foresee the consequences of application thereof.

31.2. The Applicants hold that the contested provisions had been adopted without due consultations with persons belonging to the affected ethnic minorities. The *Saeima*, however, had provided information regarding the involvement of society in the process of elaborating the contested provisions.

In adopting decisions that affect the rights of persons belonging to ethnic minorities, compliance with the principle of good legislation means that the participatory right of persons belonging to ethnic minorities is respected, i.e., the

opinions and proposals of the respective persons or societal groups are heard and evaluated (*see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.1.*).

The *Saeima* and the Ministry of Education and Science point out that, even before the draft law had been submitted to the *Saeima*, social partners, representatives of the sector and parents of educatees had been heard at the Advisory Council's sitting. A meeting between the Minister for Education and Science and representatives of the institutions of minority education had been organised (*see Case Materials, Vol. 1, pp. 78 and 148*).

Likewise, it can be established that the draft law, elaborated by the Ministry of Education, had been transferred for societal participation in the public portal of draft legal acts from 8 to 22 April of 2022. During the public discussion, natural persons, non-governmental organisations (associations), *inter alia*, "The Latvian Human Rights Committee of the International Federation of Human Rights", "Public Inspectorate of the Russian Language", "Daugavpils Branch of the Latvian Russian Community", "Association of Parents of Private Schools", "Latvian Institute for Future Studies", "Latvian Association for the Support of Russian Language Schools", movement "Parents' Voice", as well political parties, *inter alia* "The Latvian Russian Union" and "the New Harmony", have submitted comments, predominantly expressing objections to the draft law.

After the draft law was adopted in the first reading at the sitting of the *Saeima* on 16 June 2022, it was discussed at six sittings of the *Saeima* Committee of Education, Culture and Science, with the participation of the Minister for Education and Science, representatives of various ministries, institutions of local governments and public administration, the Ombudsman's Office, the Latvian Association of Local and Regional Government, the Latvian Association of Education Managers, representatives of the parents' association "Parents' Voice", heads and teachers of the educational institutions that previously implemented programmes of minority education, as well as parents of educatees belonging to ethnic minorities, *inter alia*, the Applicants' legal representative. While the draft law was discussed, 40 proposals had been assessed at these sittings.

After the draft law had been adopted in the second reading, 23 proposals for the third reading of the draft law were examined at two more sittings of the *Saeima* Committee of Education, Culture and Science. While the draft law was prepared for both the first and the second reading, *inter alia*, the proposal to determine that, in private educational institutions, education should be acquired in the official language and in another language was examined.

The Constitutional Court concludes that, at the time of drafting and adopting the contested provisions, the proposals and objections advanced by the stakeholders, *inter alia*, the Applicants' legal representative, were sought. Likewise, proposals related to the functioning of private educational institutions were assessed. The fact that each proposal that was received had not been included in the respective regulatory legal act cannot be the grounds for recognising that the principle of good legislation had not been complied with (*compare, see Judgement by the Constitutional Court of 21 March 2023 in Case No. 2022-06-03, Para 19.2.*).

In view of the above, the Constitutional Court has no doubts that the contested provisions had been duly discussed and that, in the process of legislation, the stakeholders' opinions had been sought, insofar possible.

31.3. The Applicants point out that the *Saeima* has not aligned the legal provisions, envisaged in the draft law, with the legal provisions that already exist within the legal system, e.g., Section 10 (3) of the law "On Free Development of Latvia's National and Ethnic Groups and Their Right to Cultural Autonomy" and Section 11 (3) of Law on the Protection of the Children's Rights.

Section 10 (3) of the law "On Free Development of Latvia's National and Ethnic Groups and Their Right to Cultural Autonomy" provides that national societies also have the right to establish national educational institutions using their own funds. However, it is stated in the second part of this section that the issues concerning the education of national and ethnic groups are governed by the Education Law of the Republic of Latvia. Likewise, the right of children belonging to the ethnic minorities of Latvia to acquire education in their native language is limited by the linkage to the Education Law, determined by the same legal provision. Hence, the said provisions, similarly to Article 13 of the

Convention on Minorities, provide that the rights of persons belonging to ethnic minorities in the area of education must be exercised in accordance with the legal regulation on the educational process.

Thus, the legislator has aligned the contested provisions with the provisions already existing in the legal system.

31.4. The Applicants hold that the *Saeima*, in the course of adopting the contested provisions, had failed to comply with what had been prescribed in the Constitutional Court's judgements. Allegedly, it has been recognised in the Judgment in case No. 2018-22-01 that the legislator, by regulating the use of languages in institutions of pre-school education, has ensured the right of an educatee belonging to the Russian ethnic minority to preserve and develop one's identity and culture in a way that takes into consideration the circumstances that characterise the Russian minority. The annotation to Amendments of 2022, contrary to this finding, does not include separate analysis of the situation in private institutions of general education. Likewise, contrary to the Constitutional Court's judicature, the legislator has not assessed the impact of the contested provisions on the quality of education and the possibility for educatees to preserve their culture, neither has it based the contested provisions on comprehensive evaluation of the reform to the language of instruction of 2018. Finally, with respect to private institutions of pre-school education, the Constitutional Court's Judgement in Case No. 2019-20-03 had not been taken into account.

Likewise, the *Saeima* had not taken into consideration the opinion of the Venice Commission of 18 June 2020, as well as the opinions of other international organisations regarding the impact of the previous reforms to the language of instruction in education upon the minority rights in Latvia.

The *Saeima*, however, points out that the legislator, in accordance with the principle of good legislation, has assessed the compliance of the legal provisions, envisaged in the draft law, with superior legal provisions, *inter alia*, the Constitution and the provisions of international law.

Likewise, the contested provisions had been adopted together with other provisions, aimed at ensuring the quality of education. The opinions of

international organisations regarding the language use in the educational process in Latvia are only advisory by nature. The fact that the legislator, in adopting the draft law, has not acted in compliance with the opinions or non-binding instructions provided by international organisations does not mean that these opinions and instructions were not properly examined but only means that the legislator has not recognised these opinions and instructions as binding and directly applicable to the new legal regulation.

The Constitutional Court concludes that, in the course of drafting the contested provisions, it was assessed how, in the process of education, the right to acquire, preserve and develop their language, ethnic and cultural singularity would be ensured to ethnic minorities, *inter alia*, by referring also to the Constitutional Court's judicature, applicable to private educational institutions (*see Annotation to draft law No. 1519/Lp13 "Amendments to Education Law"*). Likewise, pursuant to the Constitutional Court's judicature, the need for the regulation in the State on pre-school education and at the level of basic education was assessed separately. As evidenced by the process of adopting the contested provisions, the *Saeima* had been aware of the possible impact of the contested provisions on the quality of education and, *inter alia*, has adopted also such provisions that envisage the educatees' right to individualised and personalised support in the acquisition of the official language (*see Section 10 of the law of 29 September 2022 "Amendments to Education Law"*). Moreover, it should be taken into account that the Constitutional Court's judgements, referred to by the Applicants, and the findings and conclusions included therein were made with respect to that regulation of Education Law, which determined the proportion of the use of languages of instruction in the programmes of minority education, implemented within the system of general education, whereas the contested provisions establish completely different regulation on the educational process, i.e., such regulation, pursuant to which such programmes of minority education are no longer implemented. This conclusions has impact also upon the duty to assess the previous reform to the language of instruction in education. To establish whether the contested provisions comply with the Constitution, the restriction on fundamental rights should be reviewed on its merits.

It follows from the transcripts of the *Saeima*'s sittings at the time when the contested provisions were drafted that attention was paid to the opinions provided by international organisations, *inter alia*, by the Venice Commission and the Advisory Committee (*see Transcript of the sitting of the 13th Convocation of the Saeima of 16 June 2022*). At the court hearing, the representative of the Ministry of Education and Science pointed out that, at the time when the contested provisions were drafted, the reports by the Venice Commission and the Advisory Committee, adopted until the respective moment, had been taken into consideration (*see Case Materials, Vol. 5, p. 55*). However, it should be taken into account that the conclusions, included in these reports, apply to that regulation of Education Law that determined the proportion in the use of the language of instruction in programmes of minority education, implemented within the system of general education. Moreover, the practice of the UN committees that monitor human rights treaties and the conclusions and recommendations made by other advisory and explanatory mechanisms and commissions are to be considered as being an authoritative source for the interpretation of international treaties; however, they are not legally binding *per se*.

Likewise, it follows from the publicly accessible preparatory materials for the contested provisions that, at the time when the contested provisions were drafted, the *Saeima* Committee of Education, Culture and Science had received a letter from the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe, in which opinion on the draft law "Amendments to Education Law" and the related draft law "Amendments to the Law on General Education" was expressed. It was noted in the letter that the adoption of the said draft laws would have adverse effect on the possibilities for the representatives of national minorities to learn in their native language, in particular, in the early years of education (*see Letter from the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe of 20 June 2022. Available: titania.saeima.lv*). The Saeima Committee of Education, Culture and Science requested the Ministry of Education and Science, the Ministry of Foreign Affairs and the Ministry of

Justice to assess the arguments expressed in this letter. The deputies serving in the Committee had access to the aligned opinion of the Ministries, stating that, in implementing the transition to the official language as the language of instruction at all levels of education, the right of persons belonging to ethnic minorities to use their native language was respected (*see Letter from the Ministry of Education and Science No.4-2e/22/2098. Available: titania.saeima.lv*). Thus, the arguments expressed by the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe were examined.

Thus, the restriction on fundamental rights was established by a legal provision that had been adopted in due procedure.

32. Any restriction on fundamental rights should be based upon circumstances and arguments proving necessity for it because the restriction is established for the sake of important interests – a legitimate aim.

The *Saeima* has noted that the use of the Latvian language continues to be insufficient and the existing separation of the Latvian language and the Russian language information space does not promote social cohesion and protection of the democratic state order. The Applicants also admit that the restriction on fundamental rights has a legitimate aim that is related to the protection of the official language.

The Preamble to the Constitution reveals the values that are the foundation for creating a democratic, inclusive society. The Latvian language is one among these values (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 24.2.*). It is an integral part in the constitutional identity of the Latvian State. The State's obligation not only to ensure the legal status of the Latvian language but also to use the means at the State's disposal to ensure that the Latvian language actually performs its function of the official language follows from the Preamble to and Article 4 of the Constitution (*compare, see: Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. Konstitucionālo tiesību komisijas viedoklis un materiāli. Rīga: Latvijas Vēstnesis, 2012, 134. lpp.*). The State must promote

and strengthen the use of the Latvian language in Latvia to ensure that the Latvian language is able to perform effectively its functions of the official language. *Inter alia*, the State has the positive obligation to promote the use of the official language at all levels of education (*compare, see Judgement by the Constitutional Court of 11 June 2020 in Case No. 2019-12-01, Para 27*).

The restriction on fundamental rights, included in the contested provisions, is aimed at the protection of the official language, ensuring the possibility for persons belonging to ethnic minorities to increase the level of their proficiency in the official language at all levels of education.

Proficiency in the official language allows a person to gain maximum benefit from the system of education, existing in the State, at all levels of education.

Apart from its social functions, the official language performs also specific tasks of national importance, i.e., ensures functioning of the State and communication between a person and the State (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 18*). A person needs appropriate knowledge of the official language also in order to wish and to be able to participate in the life of society (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No.2018-12-01, Para 24.2.*).

Finally, the proficiency in the official language of persons belonging to ethnic minorities protect also the right of other persons to use the official language freely in any area of life throughout the territory of the State (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-22-01, Para 18*).

Hence, increasing the proficiency in the official language is essential also for ensuring a person's rights and creating a cohesive society.

The restriction on fundamental rights, included in the contested provision, is also aimed at decreasing segregation of educational institutions and self-segregation of persons belonging to ethnic minorities. Equal and appropriate possibilities to acquire general education in educational process in the official language that consolidates society are ensured to educatees in all educational

institutions, i.e., in accordance with the united school approach (*see: United School. The State Education Quality Service. Available: ikvd.gov.lv*). Every educatee is provided better possibilities to transfer from one educational institution to another within the framework of one stage of education. The development of a more cohesive society is facilitated, firstly, by the fact that children from early age have been ensured the possibility to interact with other representatives of society and, secondly, by the fact that all members of society are ensured the basis for communication – appropriate proficiency in the official language. Thus, from this perspective, the restriction on fundamental rights, included in the contested provision, is aimed also at the protection of the democratic state order.

Hence, the restriction on fundamental rights, established by the contested provisions, has legitimate aims – protection of the democratic state order and other persons' rights.

33. In ascertaining whether the restriction on fundamental rights is proportional, the Constitutional Court verifies, first and foremost, whether the restriction is suitable for reaching the legitimate aims, i.e., whether the legitimate aims can be reached by the chosen measures.

33.1. As noted at the court hearing by the summoned person *Dr. paed.* Ieva Margeviča-Grinberga, the less exposure a person has to a language, the longer it takes to learn it (*see Case Materials, Vol. 4, p. 57*). A similar conclusion was highlighted also by *Dr. psych.* Anika Miltuze, noting that activities in the specific language facilitated linguistic development; moreover, the sooner educatees started learning several languages in different environments, the less resources the language acquisition required (*see Case Materials, Vol. 6, pp. 142 and 144*). Likewise, the Ministry of Education and Science, referring to the scholar of linguistics Erika Hoff, has noted that it is important for a child, already at an early age, to hear complex and diverse linguistic constructions as it helps them to form grammatically more correct forms in the future (*see Case Materials, Vol. 6, p. 23*).

The restriction on fundamental rights, established in the contested provisions, facilitates the acquisition and use of the official language. It is aimed at ensuring that educatees, both at the level of pre-school education and at the level of basic education, would use the official language daily in the educational process and gain the experience of using it. Thus, the restriction on fundamental rights, included in the contested provisions, facilitates the development of proficiency in the official language and, thus, also successful transition to the successive stages of education.

Likewise, ensuring uniform education in the official language in the majority of educational institutions where the programmes of general education are implemented or the establishment of a united school prevents segregation of educational institutions, decreases the self-segregation of persons belonging to ethnic minorities and helps to ensure equal rights to quality education. Thus, in any stage of education, educatees are given more choices for moving from one educational institution to another. Thus, at every level of education, the contested provisions serve the aim of consolidating the society.

Hence, the restriction on fundamental rights, included in the contested provisions, is suitable for reaching the legitimate aim – protection of the democratic state order and other persons' rights.

33.2. The Applicants have noted that the restriction on fundamental rights, included in the contested provisions, might be unsuitable for reaching the legitimate aims, and in such a case, if the teacher does not communicate with the child in their native language, in particular, at the level of pre-school education, not only the child's emotional, psychological and intellectual development might be delayed but it might also leave adverse impact upon the child's health and physical development. As the result, the child might not learn the Latvian language but, quite on the contrary, would not learn it, *inter alia*, by refusing to attend the institution of pre-school education.

However, the persons summoned in the case have dismissed the possibility of this risk. Among others, *Dr. psych.* Baiba Martinsone has noted: the statement that, without envisaging the possibility for a child to use the minority language in the educational process, the acquisition of the official

language could be negatively affected is unfounded. Any adaptation to new circumstances, *inter alia*, using another language, initially would always imply the use additional individual resources (intellectual, as well as emotional) and the involvement of the closest environment, i.e., the family (*see Case Materials, Vol. 3, pp. 47 and 48*). Several other summoned persons – both scholars of pedagogy and psychology, LIZDA, as well as the Ombudsman – have underscored that the extent to which learning in the official language is easy or difficult for a child depends, to a large extent, upon the family’s influence (*see Case Materials, Vol.1, p. 125, Vol. 2, p. 32, Vol. 3, p. 27, and Vol. 4, p. 27*). Parents’ cooperation with the teacher, as well as the parents’ own attitude towards the official language and the child’s learning is said to be essential (*see Case Materials, Vol. 3, p. 3*). This, in turn, leads to the conclusion that if proper support is provided to a child, *inter alia*, the family’s support, acquisition of education in the official language will not cause significant adverse effects for the child.

Dr. psych. Anika Miltuze has pointed out that education in one language – the official language – is the most appropriate for children and, thus, children can avoid mixing the codes of two languages and difficulties in the acquisition of the curriculum (*see Case Materials, Vol. 6, p. 143*). The conclusion that follows from the above: exactly the fact that, before the contested provisions entered into effect, the curriculum of general education had to be acquired bilingually, in a determined proportion, caused greater difficulties for children. The Ministry of Education and Science subscribes to this, pointing out that, currently, many children in the age group from eighteen months to three years successfully speak in two languages, thus, differentiating between the language to be used at home and at the educational institution (*see Case Materials, Vol. 6, p. 23*).

Hence, the procedure defined in the contested provisions is more favourable for a child’s development than the previous regulation since it decreases the level of stress for the child and facilitates the development of their skills, *inter alia*, linguistic skills. This applies to all levels of education.

The Constitutional Court also takes into account that, with the adoption of the contested provisions, the legislator also added Para 2¹ to Section (55) of Education Law, envisaging the educatee's right to receive individualised and personalised support in the acquisition of the official language. Third part to Section 20 and the eighth part to Section 30 also were added to the Law on General Education, imposing an obligation to provide such support to those educational institutions that implement programmes of pre-school education and those educational institutions that implement programmes of basic education (*see Section 10 of the law of 29 September 2022 "Amendments to Education Law" and Sections 2 and 4 of the law of 29 September 2022 "Amendments to the Law of General Education"*). The Ministry of Education and Science has also pointed out that the additional financing, granted by the State, has allowed to recruit teachers' assistants. These persons help children to overcome socioemotional difficulties by creating relationships of mutual trust and promoting acquisition of the official language in a positive environment and ensuring, in extended-day groups, individual approach to pupils outside lessons, providing support in the acquisition of the curriculum and helping, in particular, when parents, due to their insufficient linguistic proficiency, have limited possibilities to support their children in learning (*see Case Materials, Vol. 1, p. 158*). Thus, the State has ensured additional psychological and pedagogical support to educatees.

Thus, the Applicants' argument that the contested provisions would cause additional stress for an educatee, hindering them in the acquisition of the official language, and, thus, would not reach the legitimate aims of the restriction on fundamental rights, is unfounded.

Thus, the restriction on fundamental rights, established in the contested provisions, is suitable for reaching the legitimate aims.

34. The restriction on fundamental rights, established in the contested provisions, is necessary if there are no other measures that would be as effective and would restrict a person's fundamental rights to a lesser extent. A more lenient measure is not any other measure but only such that allows reaching the

legitimate aims in, at least, the same quality (*see, for example, Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 21*).

34.1. The Applicants hold that the State should not interfere with the choice of the educatees and their parents regarding the language use in the educational process that is implemented at a private educational institution. The State could demand only the proficiency in the official language as a certain outcome. The *Saeima*, however, has pointed out that the existing approach to the language of instruction in the programmes of minority education did not ensure to educatees at the level of pre-school and basic education such proficiency in the Latvian language that is necessary to all children, equal opportunities in the further learning process and in their working life, and, thus, there no other alternative solutions for reaching the aim of quality education apart from studies only in the official language.

The legislator's substantiation for the adoption of the contested provisions is the fact that the proportion in the use of the official language and the minority language in the process of general education, determined by Amendments of 2018, did not ensure to persons belonging to ethnic minorities sufficient proficiency in the official language and, thus, the legitimate aim of the restriction on fundamental rights, included in the contested provisions, i.e., protection of the democratic state order and other persons' rights, could not be reached. Namely, it was identified in the Agency's study "Linguistic Situation in Latvia: 2016–2020" that , in 2019, 20 percent of the surveyed minority youth admitted that had learnt the Latvian language only on the level of basic skills or had poor knowledge of it (*see Sociolinguistic Study by the Latvian Language Agency "The Linguistic Situation in Latvia: 2016–2020", p. 23*). Likewise, it was established that children of pre-school age had insufficient proficiency in the Latvian language exactly in those cases where they had attended groups of pre-school education where, basically, pre-school minority education programmes had been implemented in the Russian language (*see study "The Outcomes of Latvian Language Acquisition among Pre-scholers in Latvia: in Kurzeme, Rīga and Latgale. Acquisition of the Latvian Language", Liepāja University, 2021; see*

also annotation to draft law No. 1519/Lp13 “Amendments to Education Law”, pp. 6–7 and 10–11).

At the court hearing, these shortcomings were admitted also by the private educational institution “LATREIA”, noting that, in the school year 2023/2024, 39 educatees had been enrolled in Grade 1, *inter alia* 25 graduates from institutions of pre-school minority education without appropriate proficiency in the official language (*see Case Materials, Vol. 3, pp. 7 and 8*). The teachers surveyed by LIZDA also have pointed to very radical differences in educatees’ levels of proficiency in the official language (*see Case Materials, Vol. 3, p. 2*). As pointed out both by *Dr. habil. philol.* Dace Markus and the Ministry of Education and Science, the conclusion that the educatees belonging to ethnic minorities have insufficient proficiency in the official language is applicable both to State and local government and private educational institutions that implement programmes of minority education (*see Case Materials, Vol. 4, pp. 70–78, 85 and 86*).

The Constitutional Court concludes that the Applicants, in proposing the alternative – not regulating the language use for private educational institutions but to envisage only a test of the proficiency in the official language, actually call for return to the model that was in effect before the stage in the reform to the language of instruction that was implemented in 2018. However, in view of the statements made by the educational institutions themselves and by scholars that the regulation that was previously in force had not ensured to persons belonging to national minorities sufficient proficiency in the official language, it can be concluded that return to this regulation would not help to achieve the legitimate aims of the restriction on fundamental rights. Such a solution also would be contrary to the State’s positive obligation to regulate the acquisition of education to ensure its quality.

The summoned persons have recognised that language learning is best achieved through its coherent and purposeful use in education. For example, *Dr. paed.* Ieva Margeviča-Grinberga drew attention to studies that proved that educatees belonging to ethnic minorities learnt the language better if they consistently spoke it every day in school environment. Although preservation of

the native language has many advantages, in such aspects as integration in society, education and work, however, proficiency in the official language is said to be of decisive importance (*see Case Materials, Vol. 2, p. 35*). *Dr. habil. philol.* Dace Markus also has underscored that the process of general education in the official language is not an end-in-itself but the means for learning this language on a level that would be close as possible to native language proficiency. This is the only way to ensure that the educatees belonging to ethnic minorities have appropriate proficiency in the official language (*see Case Materials, Vol. 2, p. 96*).

Likewise, Amendments of 2018 did not ensure full implementation of the “united school” approach or prevention of the segregation of the educational institutions and self-segregation of persons belonging to ethnic minorities. No alternatives can be identified that would also achieve this aim with sufficient effectiveness.

Thus, no other measures can be identified that would allow, in the process of general education, reach, in at least the same quality, the legitimate aims of the restriction on fundamental rights – protection of the democratic state order and other persons’ rights.

34.2. The Applicants are of the opinion that a more lenient regulation has been established for those educational institutions that implement educational programmes in accordance with bilateral or multilateral international agreements entered into by the Republic of Latvia, as well as educational institutions that provide education in languages of the European Union.

Section 9 (2) of Education Law sets out that in those educational institutions, which implement educational programmes in accordance with bilateral or multilateral international agreements entered into by the Republic of Latvia, education can be acquired in another language, not in the official language. Likewise, pursuant to Section 9 (2¹) of this law, education can be acquired in another language in those educational institutions, which teach, fully or in part, the subjects of general educational programme in a foreign language, to ensure acquisition of other official languages of the European Union, meeting the requirements of the respective State standard of education. Different ethnic

minorities live in Latvia, *inter alia*, such whose native language is the official language in a state, with which Latvia has concluded an international agreement in the field of education. An agreement in this area between Latvia and the Russian Federation has not been concluded (*see: Intergovernmental agreements and programmes for their implementation. Ministry of Education and Science. Available: izm.gov.lv*). Also, the Russian language is not a language of the European Union. Therefore, in the educational process, only the regulation of Section 9 (1¹) of Education Law and Guidelines for Pre-school Education apply to persons belonging to the Russian minority.

The Constitutional Court has previously noted that reinforcing the acquisition of the languages of the European Union is Latvia's aim, which follows from the Preamble to the Constitution and the principle of good faith that exists in international law. The possibility to acquire education in one of the official languages of the European Union, as an exception, has been envisaged in Para 2¹ of Section 9 (2) of Education Law not with the aim of developing the culture and identity of the respective country but to promote in-depth acquisition of foreign languages. Hence, the educatees who are acquiring general education in State and local government educational institution, *inter alia*, by studying in-depth a language of some European Union State cannot be compared to educatees wishing to acquire education in a minority language (*compare, see Judgement by the Constitutional Court of 23 April 2019 in Case No. 2018-12-01, Para 21.2., and Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 23.2.*).

Persons who belong to such ethnic minorities whose language is the official language of a state, with which Latvia has concluded an international agreement in the area of education, and persons who belong to such ethnic minorities, whose language is not the official language of a state, with which Latvia has concluded an international agreement in the area of education, are comparable. This has been recognised also by the European Court of Human Rights (*see Judgement by the European Court of Human Rights of 16 November 2023 in case "Džibuti and Others v. Latvia", Application No. 225/20, and others, Para 160*). Since different regulation on the acquisition

of education has been envisaged for each of the group of ethnic minorities referred to, differential treatment of them has been established.

As mentioned above in this judgement, during the period of occupation, the minority educational institutions were closed and the policy of russification was imposed on them (*see Para 30 of this judgement*). Moreover, the number of those with proficiency in the other minority languages that traditionally had been spoken in Latvia, i.e., Belorussian, Polish, Lithuanian, Estonian, Romani, etc., continues to decrease (*see Sociolinguistic Study by the Latvian Language Agency “Linguistic Situation in Latvia: 2016–2020”, p. 66*). The position of the Russian language, on the contrary, continue to be stable in Latvia and this language can be deemed to be self-sufficient.

Also the educational institutions, which have been established by persons belonging to such ethnic minority, whose language is the official language of the state, with which Latvia has concluded an international agreement in the area of education, and which implement programmes of general education, have the duty to ensure that educatees of these institutions acquire sufficient level of proficiency in the official language. Whereas, with the aim of eliminating actual inequality and protect those ethnic minorities living in Latvian whose language, culture and ethnic singularity is under threat, the State may introduce positive measures, manifested as the right to include in the programmes of general education, approved in the process of licencing, specific subjects in other languages. This is admissible, *inter alia*, exactly because such educational institutions have not belonged to network of segregated schools and the risk of self-segregation is not characteristic of such ethnic minorities. I.e., with respect to these ethnic minorities there is no need to establish restrictions necessary for reaching the legitimate aim of the contested provisions – protection of the democratic state order.

Hence, there are no alternative measures that would allow reaching the legitimate aims of the restriction on fundamental rights in the same quality.

35. To ascertain whether the legislator's actions, in establishing the restriction on fundamental rights, defined in the contested provision, were appropriate, the Constitutional Court, firstly, must verify whether the contested provisions do not diminish the quality of curriculum acquisition. Secondly, the Constitutional Court must verify whether, through the contested provisions and other legal provisions related thereto, reasonable balance between fostering the use of the official language and exercising the rights of persons belonging to ethnic minorities in the educational process taking place in private educational institutions had been respected (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 22*).

The conclusion that the scope of the State's discretion differs with respect to different levels of education follows from the case law of the European Court of Human Rights: the lower the level of education, the less discretion the State has (*see Judgement by the European Court of Human Rights of 21 June 2011 in Case "Ponomaryovi v. Bulgaria", Application No. 5335/05, Para 56*). Other institutions supervising international human rights mechanisms also have pointed to the greater importance of the native language in the early stages of a child's life (*see UN Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education, 8 December 1999,, UN Doc. Nr. E/C.12/1999/10, Para 6, and General Comment of the UN Committee on Economic, Social and Cultural Rights No. 20, 2 July 2009, UN Doc. Nr. E/C.12.GC/20, Para 21*). Moreover, at each level of education, the way, in which education is provided, and regulation differ. Pursuant to the Law on General Education, the stage of pre-school education is not part of formal education and only Guidelines for Pre-school Education are applicable to it, whereas the acquisition of basic education is implemented as formal education, which is regulated by the State standard of general education. Therefore, first and foremost, the Constitutional Court will review the proportionality of the restriction, included in the contested provisions, at the level of pre-school education, following that – at the level of basic education.

36. It follows from Section 21 of the Law on General Education that access to an institution of pre-school education is ensured to a child from the age of eighteen months. However, pursuant to Section 4 of Education Law and Section 20¹ (1) of the Law on General Education, preparation of the child for the acquisition of basic education or the acquisition of pre-school educational programme is mandatory from the age of five. Section 20 (2) of the Law on General Education provides that a child acquires the pre-school educational programme until the age of seven.

Thus, in pre-school education, learning is divided into two stages. The first stage is pre-school education in the early childhood from eighteen months to five years. It is possible to choose for a child until the age of five other services of upbringing and education, however, these cannot be considered as the acquisition of pre-school education. The second stage in pre-school education is the mandatory pre-school education for children from the age of five to the age of seven years.

Although a document certifying the acquisition of pre-school education is not issued, pursuant to the Law on General Education, it is part of general education. This means that there may be special regulation on the implementation of such education.

The aims of pre-school education is the development of a child's multi-sided personality, improving health, getting ready for the acquisition of basic education. The mandatory curriculum, defined in the Guidelines for Pre-school Education, applies to any child who is in a pre-school educational institution, thus, to children starting from the age of eighteen months. Every child must acquire age-appropriate skills in each of the seven areas of learning (*see Case Materials, Vol. 6, p. 13*). A child acquires the pre-school curriculum in integrated learning process – a play lesson throughout the day, including the planned outcomes for the child in several areas of learning. It is set out in Para 2 of the Guidelines for Pre-school Education that the pre-school educational curriculum is implemented with the aim of having a curious, creative and joyful child, who leads a healthy, safe and active life, is interested in learning and enjoys doing it,

gaining experience about oneself, others, the surrounding world and the interactions within it.

Pursuant to the contested provisions, the entire mandatory curriculum of pre-school education must be acquired in the official language.

36.1. Deciding on the effectiveness of the implementation of the contested provisions and legal provisions that are systemically linked to them does not fall within the Constitutional Court's jurisdiction (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 22.1.*). However, the Constitutional Court can establish, whether the authorities have ensured the totality of necessary support measures – methodological teaching materials, possibilities of continuous education for teachers and opportunities for professional development (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 22.1., and Judgement of 23 April 2019 in Case No. 2018-12-01, Para 20.3.*).

The Applicants have noted that commencing the new reform without assessing the results of the previous reform to the language of instruction with respect to the quality of education had been inadmissible. Allegedly, the contested provisions had been adopted without proper risk assessment. Currently, difficulties in the educational process are caused, *inter alia*, by the shortage of qualified teachers and support staff; complete prohibition for teachers and support staff to use the minority language, ban of bilingual teaching aids and aids in the minority language; prohibition for an educatee to present their achievements in their native language and the need to use dictionary in every lesson. Allegedly, in practice, an educatee's right to receive individualised and personalised support in the acquisition of the official language skills is ensured only in the official language and, hence, is not provided effectively. The *Saeima* and the Ministry of Education and Science have provided information about the support measures ensured by the State to educational institutions and teachers.

36.1.1. The reform to the language of instruction, introduced by Amendments of 2018, with respect to the implementation of pre-school educational programmes and programmes of basic education in Grades 1-7

entered into effect on 1 September 2019, in other groups of grades – in the subsequent years and was completed in the school year of 2021/2022. The contested provisions were adopted on 29 September 2022, i.e., a couple of months after the end of the previous school year. At the court hearing, arguments were provided that the quality of an educational reform could be fully assessed only after the educatee has passed through the entire cycle of mandatory education, i.e., after almost nine years (*see Case Materials, Vol. 4, p. 102*). Hence, at the time when the contested provisions were adopted, the results of the previous reform to the language of instruction had not been assessed comprehensively.

The Constitutional Court concludes that the concept of quality in education was defined in the law of 8 April 2021 “Amendments to Education Law” , responsibilities with respect to ensuring quality control of education provided by educational institutions was specified. The State’s system for quality assurance in education was defined in Education Law and specific obligations both of the Ministry of Education and Science and local governments, as well as the State Education Quality Service were determined. *Inter alia*, the obligation to prepare an annual report on the quality assessment of education and to submit it for approval to the Cabinet was imposed upon the Ministry of Education and Science. This report must include quality assessment of the educational process, curriculum, environment and management at all levels of education. Thus, it applies also to the level of pre-school education. The State Education Quality Service has been imposed the obligation to elaborate guidelines for quality assurance in education, provide recommendations for increasing the quality of education, as well as organise collection and analysis of the data on the quality of education. Hence, the legislator had established a system for annual and constant monitoring of the quality of education and, thus, the outcomes of previous reform to the language of instruction in education.

In addition to that, various studies have been conducted, *inter alia*, the study of the Liepāja University, published in 2021, “The Outcomes of Latvian Language Acquisition among Pre-scholers in Latvia: in Kurzeme, Rīga and Latgale. Acquisition of the Latvian Language”.

Although even more in-depth assessment of the effects of the previously adopted legal provisions would be advisable, the impact of the current geopolitical situation on the need to complete as soon as possible the reform to language of instruction in education should be taken into consideration in the present case, as it should result in a united school or in a system where the segregation of the educational system has been eliminated. Moreover, the lack of in-depth studies of the previous report *per se* does not mean that the subsequent educational reform will have an adverse impact on the quality of education. The issue of the impact left by reform on the quality of education should be examined by reviewing what kind of mechanisms for assuring and controlling the quality of education are available and will be used.

36.1.2. In assessing the availability of teachers and methodology, as well as other factors influencing the quality of education, the fact that private educational institutions function differently than the educational institutions established by the State and local governments should be taken into consideration.

Private educational institutions are characterised by broader discretion and better possibilities in recruiting the pedagogical staff and planning their workload, allowing them to channel greater human resources for the development, preparation of teaching aids, communication and cooperation with the parents or legal representatives of educatees (*see study “Privāto izglītības iestāžu ieguldījums vispārējās izglītības nodrošināšanā”, 2023, 185. lpp. Available: ppdb.mk.gov.lv*). Since private educational institutions are characterised by greater autonomy and flexibility with respect to educational programmes and teaching methods they have the right to include in their activities also experimental solutions and innovative educational approaches (*see Ibid., p. 188*). Development and differentiation of teaching materials, as well as adjustment of methodological and organisational measures to the abilities, motivation, interest and talents of each educatee is to be considered as being a typical element in the activities of private educational institutions.

The information that was provided at the court hearing by private institution of pre-school education “GALAKTIKA” leads to the conclusion that timely planning of the transition and methodology allowed to prepare successfully for the impact of the contested provisions on the new school year (*see Case Materials, Vol.4, pp. 126, 127, 145 and 146*).

At the court hearing, the Applicants’ legal representative did not elaborate the argument regarding the shortage of teachers, able to ensure education complying with the contested provisions, at the level of pre-school education, and neither did private institutions of pre-school education pointed to such shortage.

The Ministry of Education and Science, in turn, noted that the range of support measures offered by it included also courses for upgrading the teachers’ professional competencies and language skills, as well as courses for teachers’ continuous education (*see, Case Materials, Vol. 4, p. 60*). Likewise, guidelines have been elaborated to support teachers working in heterogenous learning environment and enhanced supervision is ensured to identify problems and provide the necessary support on the level of State and local government educational institutions (*see Case Materials, Vol. 1, p. 146*). On the basis of decisions made at the Advisory Council’s sitting of 24 April 2023, and action plan for educational institutions had been prepared “How to Reach Outcomes and Prevent Risks in Implementing Transition to Learning in the Official Language (2023–2025)”, as well as a draft action plan for the educational institution, identifying the outcomes to be reached, possible risks, types of problem solving, methodological support, teaching strategies, and best practice examples. Representatives of the Advisory Council, as well as the heads of other educational institutions, teachers and support staff are invited to become mentors for the teams of educational institutions. Mentoring support is ensured also in the areas of provisions and planning, examining in-depth issues related to the provision of various teaching aids and methodological materials, development of teaching strategies, supervision and assessment of educatees’ outcomes, as well as providing individual support to educatees with different proficiency in

the Latvian language (*see Case Materials, Vol. 2, p. 148*). These support mechanisms are available also to teachers in private educational institutions.

Likewise, Head of the Department of Preschool and Primary Education, Faculty of Psychology, Pedagogy and Art, the University of Latvia *Dr. paed.* Ineta Helmane noted that study programmes for future pre-school teachers and the suitability of teaching methods to be mastered therein should be assessed positively (*see Case Materials, Vol. 4, p. 59 and 60*). Thus, a broad range of support measures is currently ensured both to the students in the study programme for pre-school teacher and the teachers who are already working, which allows ensuring quality pre-school education in the official language and the arguments regarding the shortage of teachers, able to ensure such education, are unfounded.

Hence, the Applicants' arguments that the quality of education at the level of pre-school education would be decreasing due to the lack of materials, methods or teachers are unfounded.

36.1.3. The Applicants' arguments that the educatee's right to receive individualised and personalised support in the acquisition of the official language is not effectively ensured in practice must be reviewed in conjunction with correct application of Section 20 (3) of the Law on General Education and Para 2¹ of Section 55 of Education Law, in compliance with the best interests of the child. Pursuant to the principle of the priority of the child's best interests, the said legal provisions, in conjunction with the contested provisions, should be interpreted to mean that real and meaningful support in the acquisition of the official language should be ensured to every child, depending on their needs. With respect to children with special needs, the State's obligation, defined in Article 110 of the Constitution, should be fulfilled, in conjunction with the best interests of children, which, in certain cases, if necessary for effective acquisition of the official language, might include also use of the native language.

A teacher's ability to use appropriate teaching methods, appropriate gestures and facial expressions in the teaching process to provide the most suitable support for the child is essential. Likewise, various auxiliary materials can be used, in the preparation of which the resources, created by the Ministry

of Education and Science and available online, can be used (*see Case Materials, Vol. 6, p. 114*). Likewise, as admitted by the Ministry of Education and Science at the court hearing, while such support is provided, educatees are not prohibited from answering to the questions posed by teachers in their native language if, in the particular instance, this is the only way how they are able to express themselves (*see Case Materials, Vol. 6, p. 25*).

36.2. The Constitutional Court underscores that the State has the obligation to control constantly the quality of education, by using effectively the mechanism for controlling the quality of educational process, set up in the state, to identify possible changes in the quality of education (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 22.1*).

The Ministry of Education and Science has pointed out that the Quality Service has conducted planned visits to private institutions of pre-school education, assessing their activities in transitioning to the united school (*see Case Materials, Vol. 4, pp. 70 and 79*). Likewise, in the school year of 2023/2024, the Quality Service conducted assessment of the transition to the united, *inter alia*, also in private institutions of pre-school education. During this assessment, the Quality Service has obtained information and data on how the learning process is ensured in the official language, to verify the professional performance of the head of the educational institution in ensuring the transition to the united school and whether the process of education takes place in the official language on the day of assessment (*see Case Materials, Vol. 6, p. 53*).

In addition to that, pursuant to Para 2 of the Cabinet Regulation of 4 June 2024 No. 325 “Procedure for Accreditation of Institutions of General Education and Vocational Education and Evaluation of the Professional Performance of the Heads thereof ” (hereafter – Regulation on Evaluation of Educational Institutions), an educational institution analyses its performance and ensures, by 1 November every year, on its website its self-assessment report that has been approved by the founder of the educational institution. Self-assessment is regular internal assessment of the quality of the performance in the educational institution, involving the teachers of the educational institution, educatees, their

parents, the founder and the management of the institution. This self-assessment must include, *inter alia*, also data and information characterising the quality of the educational institution's performance in the particular year, according to the quality assessment criteria, revealing the strong points and further development needs. At the court hearing, the institution of pre-school education "GALAKTIKA" stated that, in May of every year, it identified the opinions of parents, teachers and educatees through a survey. On the basis of the survey results, the institution can make conclusions regarding the quality of education it provides, as well as the impact left upon it by the reform (*see Case Materials, Vol. 4, p. 146*).

Once in six years, the quality of education at an institution of pre-school education is assessed by evaluating the professional performance of the heads of pre-school educational institutions (*see Case Materials, Vol. 6, p. 53 and Paras 5, 29 and 31 of Regulation on Evaluation of Educational Institutions*). Pursuant to Sub-para of 27.4. of Regulation on Evaluation of Educational Institutions, in assessing the quality categories in the performance of the educational institution and the quality categories in the professional performance of the head of the educational institution, the level of quality is assessed also with respect to good governance, comprising three criteria: administrative effectiveness, professional performance of the management, as well as support and cooperation. At the court hearing, the Quality Service pointed out that, in assessing the administrative effectiveness, the effectiveness of all management processes taking place within the institution is reviewed, this includes also evaluation of strategic planning, annual planning, daily planning, the quality of self-assessment process, as well as the system of personnel management. Within the framework of the professional performance of the management, the knowledge, skills and competences of the head of the institution in legal matters, as well as communication skills are assessed. With respect to support and cooperation, elements in the quality of management provided by the head of the institution are assessed, including the ability of the head of the institution to cooperate with all parties involved in the educational process, *inter alia*,

children's parents, founders of the institution, as well as other stakeholders (*see Case Materials, Vol. 6, p. 54*).

Chapter V of Regulation on Evaluation of Educational Institutions provides that if the assessment given by the Quality Service of even one criteria referred to in this Regulation is "insufficient" or if it repeatedly assesses the quality level as "needs improvements", the Quality Service adopts a decision on the unsuitability of the head of the institution of pre-school education for the office. The founder of the institution of pre-school education is informed about this decision and is urged to terminate legal employment relationship with the head of the pre-school educational institution.

Hence, it can be concluded that the control over supervision of quality at an institution of pre-school education is implemented through the self-assessment of the educational institution and evaluation of the head of the institution. The head of an institution of pre-school education is responsible for the legality of all programmes, implemented in the educational institutions, parents or legal representatives of educatees can turn to them also in matters pertaining to the curriculum of education (*see Case Materials, Vol. 6, pp. 53–55*). Likewise, parents or legal representatives of educatees have the possibility to submit a complaint to the Quality Service.

Thus, the State has established a system that is aimed at quality control and assurance, *inter alia*, at the level of pre-school education. Regular assessment of the quality of performance in educational institutions is ensured, involving teachers, educatees, their parents, founders and management of the institution, as well as public institutions.

In view of the above, as well as because only one school year has passed since the contested provisions entered into effect and further adjustment to educatees' needs is envisaged, presently, the Constitutional Court has no grounds to conclude that the contested provisions would cause decrease in the quality of education. However, the State is obliged to control constantly the quality of education to detect possible changes to it and ensure the right of persons belonging to ethnic minorities to quality education. This obligation includes the requirement to take into consideration the recommendations made by public

institutions with respect to educational matters, *inter alia*, with respect to bringing new generation of teachers in education and keeping them in the profession (*see Report by the State Audit Office of the Republic of Latvia of 13 June 2024 “Are we training the teachers we need and ensure that they stay in the profession? Available: lrvk.gov.lv*). The State is obliged to ensure quality of education in the long-term, in compliance with the sustainability principle. To defend these fundamental rights, the respective persons may turn also to law enforcement institutions.

36.3. The Constitutional Court must verify subsequently, whether the contested provisions and the related legal regulation ensure a reasonable balance between facilitating the use of the official language and exercising the right of persons belonging to ethnic minorities in the educational process in private educational institutions at the level of pre-school education.

The Applicants hold that the requirement to acquire general education in private educational institutions at the level of pre-school education only in the official language denies the possibility to acquire, in private institutions of minority education, at the level of pre-school education, education in the language of ethnic minority and, thus, denies the very essence of this fundamental right. The *Saeima*, however, points out that the respective fundamental right must be exercised in compliance with the State educational standards and has drawn attention to additional measures, ensured by the legislator, for promoting the acquisition of the language and cultural history of the ethnic minority.

36.3.1. In regulating the language use in the process of education, the State must attain balance, appropriate for the circumstances, between the need to ensure to each person belonging to an ethnic minority the possibility to acquire, in the process of general education, the official language on such a level that would allow them to integrate without difficulties in the life of the State and society, and the possibility for persons belonging to ethnic minorities to acquire the language of the respective ethnic minority and to use it in the process of education, so that they would be able to preserve their linguistic identity, as well as ethnic and cultural singularity, but would not allow segregation on linguistic

basis (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 15.3.*).

Acquisition of the official language and exercise of minority rights are not two aims to be juxtaposed and exercising the rights of ethnic minorities cannot hinder effective and comprehensive acquisition of the official language (*compare, see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 22.2.*). In assessing, whether a reasonable balance has been ensured between facilitating the use of the official language and exercising the rights of persons belonging to ethnic minorities, the possibilities of private educational institutions to ensure in educational process at the level of pre-school education the rights, included in Article 114 of the Constitution must be examined. Likewise, the Constitutional Court takes into consideration the special circumstances in Latvia that have evolved as the result of prolonged occupation and russification, as well as the current situation in the context of using the official language.

It was concluded previously that, prior to the adoption of the contested provisions, in the institutions of pre-school minority education, proper acquisition of the official language was not ensured to educatees (*see Para 34.1. of this judgement*). Namely, it was concluded both in the study conducted by the Liepāja University and in the activities of educational institutions that those children who had completed the stage of pre-school education in educational institutions where the Russian language prevailed, had not acquired sufficient proficiency in the official language to acquire education at the level of basic education. Due to the bilingual approach, division of schools continued and, at the level of pre-school education, significant differences in the educatees' knowledge of the official language could be detected, whereas the lack of this knowledge could impact the future opportunities of the educatees themselves, as well as other persons' rights and the democratic state order.

To facilitate the development of the proficiency in the official language, thus promoting the establishment of a united school and ensuring to every person belonging to an ethnic minority the possibility to participate fully in the

democratic processes of the State and society, the legislator had the right to amend the regulation that was in effect previously.

The appropriate ability of persons belonging to ethnic minorities to communicate in the official language is invaluable in the context of protecting the democratic state order, and it is of equal importance for both the persons belonging to ethnic minorities and the society in general.

36.3.2. The summoned persons have pointed out that constant being in the environment of the respective language is the most appropriate for a child in language acquisition, *inter alia*, at the level of pre-school education (*see Case Materials, Vol. 6, p. 11*). I.e., studies show that children acquire the language faster if languages are not intermixed (*see Case Materials, Vol. 6, p. 13*). Moreover, at an early age, from eighteen months, allegedly, it is much easier to acquire the language if the teacher who is present is not intermixing both languages in use. Moreover, the procedure of educational process at the level of pre-school education, determined in the contested provisions, coincides with the most appropriate approach to the development of a child's linguistic and other skills. Ensuring the environment of the official language complies with the best interests of the child (*see Case Materials, Vol. 6, p. 45*).

Whether an educatee feels well and safe at an educational institutions depends not only upon the language to be used in the process of education but also upon the teachers' professionalism, skills in using various, *inter alia*, non-verbal tools of communication, as well as the environment in the educational institution.

36.3.3. The *Saeima* has noted additionally that legal provisions that are systemically linked to the contested provisions include safeguards for the possibility of persons belonging to ethnic minorities to preserve their native language and identity. In the framework of educational process, the rights of persons belonging to ethnic minorities, allegedly, are ensured in other ways, outside the programmes of pre-school education, *inter alia*, as part of interest-related education.

Education Law defines interested-related education as implementation of the individual educational needs and desires of a person regardless of age and

previously acquired education. Thus, programmes of interest-related education can be implemented already for children from the age of eighteen months, creating their curriculum in accordance with the children's abilities and needs. Interest-related education is voluntary, education that complies with a certain level of education is not required to enrol in it.

Educational institutions, *inter alia*, private educational institutions, have the right to implement programmes of interest-related education without obtaining a licence. To provide classes in interest-related education, a teacher has to elaborate the programme to be implemented. Moreover, parents or legal representatives of educatees have the right to submit complaints regarding the legality of the provision of programmes of interest-related education both to the founder and the head of the pre-school educational establishment and to the Quality Service. I.e., interest-related education is an organic and controlled part of the educational process that occurs in the educational institution.

It is possible to include in the programmes of interest-related education that are implemented in private institutions of minority education also the language of the ethnic minority and the curriculum related to the culture and ethnic singularity.

As noted by *Dr. paed.* Ieva Margeviča-Grinberga, research outcomes conform that interest-related education can ensure acquisition of a language, as well as preservation of culture and identity. Social interaction of educatees with their peers within programmes of interest-related education are said to be as important as the acquisition of the language (*see Case Materials, Vol. 4, pp. 32, 52 and 56*). *Dr. psych.* Anika Miltuze also has recognised that, at the pre-school age, a programme of interest-related education can be combined with the basic educational programme, e.g., offering practical classes in interest-related education, where conversations in their native language can be heard in the background, and do not cause adverse effect for the educatee. Combining the implementation of a pre-school educational programme with the interest-related education, the educatee's environment is enriched, thus facilitating the brain development (*see Case Materials, Vol. 6, p. 9*). Hence, it follows from the opinions expressed at the court hearing that, in general, interest-related education

is suitable means for the acquisition of the minority language, as well as the curriculum related to the culture and ethnic singularity of the minority.

36.4. The Applicants have noted that it is not enough to have classes in interest-related education to ensure development and preservation of the language, culture and ethnic singularity of a minority. *Inter alia*, classes in interest-related education are held in afternoons when the child is already tired.

However, neither Education Law nor Guidelines for Pre-school Education restrict pre-school educational institutions in implementing several programmes of interest-related education in different parts of the day, insofar this does not cause disproportionate impact upon acquisition of the mandatory curriculum. It follows from the Law on General Education and Education Law that the stage of pre-school education, contrary to the remaining part of the general education, is not part of formal education and the State has not regulated the number of hours that an educatee has to spend per day in each age group to acquire the programme of pre-school education. Likewise, the mandatory curriculum that an educatee has to acquire in the particular age group is not regulated, only the knowledge that an educatee should have upon graduating from the institution of pre-school education has been defined (*see Case Materials, Vol. 74–76*). The institution of pre-school education itself determines how to reach this aim, i.e., the curriculum to be acquired and the outcomes to be reached in each area of learning for each age group, by elaborating the programme of pre-school education as well as by adjusting the implementation of it to the abilities and needs of each educatee.

In view of the private educational institutions' right to flexibly schedule the time for learning, agreeing on it with the councils of educational institutions, the classes in interest-related education linked to the language, culture and ethnic singularity of the minority can be held at the institutions of pre-school education both before and after the time scheduled for the acquisition of the mandatory curriculum for the stage of pre-school education. Likewise, the possibility to organise classes in such interest-related education for the duration of several hours every day, dividing these in several blocks and ensuring their interaction with the implementation of the basic programme, has also been allowed (*see Case Materials, Vol. 6, pp. 67–72*). The only restriction is the secondary nature

of such educational programmes vis-à-vis the mandatory curriculum, the implementation of which continues to be the priority for the educational institution (*see Case Materials, Vol. 6, pp. 57 and 58*).

At the court hearing, several institutions of pre-school education confirmed the possibility for ensuring flexibly interaction between classes in interest-related education and implementation of the programme of pre-school education. This possibility already has been used by the institution of pre-school education “Maza Rasiņa”, organising for children from the age of eighteen months classes in Russian culture with elements of pottery (*see Case Materials, Vol. 6, p. 87*). Likewise, institution of pre-school education “BONA FAVOLA” has referred to such implementation of interest-related education (*see Case Materials, Vol. 6, p. 179*).

Thus, private institutions of minority pre-school education have broad possibilities for ensuring interaction between classes in interest-related education and implementation of the pre-school educational programme and, accordingly, ensuring the educatees’ right to acquire, preserve and develop the language, culture and ethnic singularity of the minority. The way in which such interest-related education is integrated in the pre-school educational process and how the tools for adjusting and individualising other teaching methods that are available to private educational institutions are used depends on each private educational institution.

In view of the fact that, at the level of pre-school education, interest-related education may be implemented in private educational institutions both on the basis of parents’ demand and upon the initiative of the educational institution, the involvement of the educational institution’s council is essential because the parents or legal representatives of educatees may point to the need for and significance of such interest-related education, *inter alia*, the time when the respective educational programme should be implemented.

Likewise, festivities that are important for ethnic minorities can be celebrated at the educational institution. The culture and identity of the ethnic minority can be reflected also in the process of upbringing. Finally, as the Ministry of Education and Science pointed out at the court hearing, it is possible

to talk about the traditions and culture of other ethnicities while implementing the programme of pre-school education, acquiring the curriculum that is related to the identity of an ethnic minority in the official language.

36.5. The *Saeima*, adding its previous statements, has pointed out that it had adopted the contested provisions in conjunction with other provisions that regulate the introduction of a programme of interest-related education in the language and cultural history of an ethnic minority, financed by the State.

Section 47³ of Education Law provides, *inter alia*, that a local government ensures to minority educatees who are acquiring a programme of basic education in institutions of general education, located within its administrative territory, the possibility to acquire, free of charge, the curriculum of minority language and cultural history in programmes of interest-related education. To ensure to minority educatees the possibility to acquire such programmes, a local government may delegate implementation of such programmes to a private person, thus, also to a private educational institution, established by a private person or a legal entity.

Pursuant to Para 47 of Section 14 of Education Law, the Cabinet has issued a model programme of such interest-related education and guidelines for implementation thereof (*see Cabinet Regulation of 29 August 2023 No. 494* “Regulations Regarding the Model Interest-related Educational Programme in Minority Language and Cultural History and Guidelines for Implementation thereof”). It is planned that, *inter alia*, educatees would learn, in the framework of such a programme, the oral traditions and expressions of ethnic minorities, traditional games, seasonal festivities, ethnic symbols, to the extent possible, particularities of traditional singing, music-making, dancing and craftsmanship skills, as well as cultural artefacts that characterise the singularity of culture, get to know persons that are important in the culture of an ethnic minority and their most significant achievements, as well as explore the possibilities for preserving and transferring cultural values.

Likewise, involvement of educatees in events for creating more extensive educational experience related to the acquisition of the curriculum is envisaged, e.g., concerts, exhibitions, excursions, visits to theatre performances, and camps.

The local government's obligation to ensure availability of a programme of interest-related education in the language and cultural history of an ethnic minority at the level of pre-school education in the form of play lessons pertains to every child who wishes to participate in such a programme. It follows from the above that a private educational institution may request that the implementation of such programmes, financed and regulated by the State, is delegated to it and, accordingly, also receive financing.

Thus, the State has established the procedure allowing educatees of private educational institutions, without any additional expenses, to continue acquiring, developing and preserving their native minority language, culture and ethnic singularity. Moreover, in this regard, the discretion of private educational institutions has been maintained, which is manifested as the right to determine the procedure for implementing the programme. The part of the day in which such a programme should be implemented depends upon the internal organisational processes in the educational institution and parents' wishes (*see Case Materials, Vol. 5, p. 40*).

Whether a private educational institution wishes to implement an interest-related educational programme that complies with the model programme and to receive the respective State financing is within the discretion of the educational institution itself. The Latvian Association of Local and Regional Governments also has pointed out that private educational institutions themselves must show interest in the implementation of a programme of interest-related minority education (*see Case Materials, Vol. 4, p. 41*). At the court hearing, the pre-school educational institution "GALAKTIKA" noted, *inter alia*, that it was implementing such a programme and was receiving financing from the local government of Jūrmala (*see Case Materials, Vol. 4, p. 154*).

Thus, the legislator and local governments have ensured real support to private institutions of minority education so that they could continue to take care of the acquisition, preservation and development of the minority language, culture and ethnic singularity. This possibility should be considered as being financial and methodological addition to the possibilities of private institutions of minority education to organise implementation of interest-related educational

programme in accordance with the wishes of the council, the founder and the head of the educational institution and the possibilities for combining educational programmes.

36.6. In addition, even after the contested norms enter into force, private educational institutions retain their role not only in ensuring general education but also in shaping the community of the ethnic minority. The contested provisions do not prohibit the educatees from communicating among themselves in their native language (*see Case Materials, Vol. 6, p. 25*) and, thus, educatees belonging to ethnic minorities still have the possibility in such private institutions of minority education to socialise with other children belonging to ethnic minority and to retain their identity and ethnic singularity. Moreover, the teachers of such educational institutions, most probably, know the language of the particular ethnic minority or it is their native language. Hence, in certain critical situations, in such schools, it would be possible for the teacher to communicate with the educatee in their native language.

36.7. In view of all the above, the Constitutional Court concludes that the contested provisions, as well as other legal provisions related thereto are aimed at ensuring quality pre-school education in the official language, *inter alia*, also in a private institution of minority education. Moreover, the autonomy of a private educational institution on organising the learning process in different ways gives the possibility to integrate in the process of pre-school education the curriculum related to the minority language, culture and ethnic singularity. Finally, the State has provided to private educational institutions methodological and financial support for implementation of programmes of interest-related minority education.

It is essential that this approach differs from the bilingual approach that was implemented previously because, complying with the best interests of a child, it separates the time when the curriculum is implemented in the official language from the time when the curriculum is implemented in the minority language (*see Case Materials, Vol. 6, p. 13*). Previously, both languages were intermixed but currently the classes of interest-related education dedicated to the minority language culture and ethnic singularity supplement the mandatory

curriculum; however, these programmes have to be separated. After adoption of the contested provisions, the mandatory content of pre-school education must be fully implemented in the official language, ensuring maximum effectiveness in the acquisition of the Latvian language, whereas during the implementation of interest-related educational programmes, the presence of their native language and culture appropriate for the child's workload, age and abilities, is ensured to children in accordance with the interest and approval of their parents or legal representatives.

Thus, the State has ensured appropriate balance between facilitating the use of official language and the right of educatees belonging to ethnic minorities to quality education and preservation and development of their language, as well as ethnic and cultural singularity in private educational institutions at the level of pre-school education.

37. Consequently, the Constitutional Court must review the proportionality of the restriction on fundamental rights, included in the contested provisions, at the level of basic education.

The third sentence of Article 112 of the Constitution provides that basic education is compulsory. This applies directly to the acquisition of general education. Hence, the State may define and has defined how such education should be acquired, i.e., it must be acquired in accordance with the State standard of basic education and programme of basic education.

37.1. The Applicants' arguments regarding possible deterioration of the quality of education are applied simultaneously to the stage of pre-school education and the stage of basic education. The Constitutional Court has already analysed the control measures over the previous reform to the language of instruction in education, implemented by the Ministry of Education and Science, as well as the measures for controlling the implementation of the contested provisions (*see Para 36.1.–36.2. of this judgement*). It must be noted additionally that the need for the contested provisions at the level of basic education is based both on research and on the data on the results of State centralised examinations (*see Case Materials, Vol. 3, pp. 147 and 148*). The Ministry of Education and

Science and other public authorities had the possibility to monitor the outcomes of examining the knowledge of educatees who had acquired basic education and the quality of education, reflected therein.

In controlling the impact of the contested provisions on the quality of basic education, the Ministry of Education and Science has conducted several surveys regarding transition to the official language as the language of instruction and also private educational institutions have expressed their opinion in such surveys. Educational institutions had been asked, *inter alia*, whether they plan to organise camps for educatees for Latvian language acquisition and several private educational institutions had planned to do it in the summer of 2024. Likewise, the institutions had been asked whether activities during breaks for fostering communication in Latvian were planned for pupils; whether the teachers of the educational institution needed courses for improving their proficiency in the Latvian language; whether an educational institution was planning a self-help strategy for teachers. The responding private educational institutions that previously were implementing minority educational programmes assessed their readiness for the transition to Latvian as the language of instruction as very good and good (*see Case Materials, Vol. 2, p. 152*).

Likewise, Sub-para 1.1. of Regulation on Evaluating Educational Institutions provides that other educational institutions, which are not institutions of pre-school education, are being accredited. The quality of an educational institution's performance is assessed similarly as the quality of the professional performance by the head of an educational institution, expressing it in five quality assessments in each of the assessment criteria. An educational institution is accredited for six years if all the elements, referred to in this Regulation, have been given the quality assessment level "needs improvements" or higher. I.e., also the educational institutions that implement programmes of general education at the level of basic education are assessed regularly. Pursuant to Para 8 of Section 20 (3) of Education Law, the Quality Service has issued Guidelines for Quality Assurance in General and Vocational Education.

The *Saeima* also has noted that, in the long term, it is planned to evaluate the practical implementation of the contested provisions and the related legal

regulation at the level of basic education in the framework of study “Linguistic Situation in Latvia: 2021–2027” (*see Case Materials, Vol. 2, p. 123*). Likewise, it is planned to assess the results of the centralised examination in the Latvian language and analyse the educatees’ previous educational experience, as well as, starting from school year 2025/2026, to conduct biannual diagnostic testing of the educatees’ performance, using tests to monitor text literacy, developed by the National Centre for Education, in Grades 3 and 6 to evaluate the educatees’ proficiency in the official language and monitor the dynamics in the improvement of the educatees’ proficiency in the official language in the long-term (*see Case Materials, Vol. 2, p. 125*).

Neither does the Constitutional Court doubt that, at the level of basic education, availability of appropriate methodological and study aids has been ensured. Likewise, private educational institutions have broad discretion also in this stage. Private educational institution “LATREIA” has confirmed this, pointing out, at the court hearing, that it has developed its own teaching methodology because the one offered by the State did not comply with the educational institution’s vision (*see Case Materials, Vol. 4, p. 121*). A similar conclusion is applicable also to ensuring individualised and personalised support for acquiring proficiency in the official language in basic education, envisaged in Section 55 (2¹) of Education Law, which must be provided in appropriate quality and in accordance with the possibilities that the educational institution has, as well as the best interests of a child.

The State’s obligation to monitor constantly the quality of education to detect possible changes in it and ensure the right of persons belonging to ethnic minorities to quality education, for the protection of which the respective persons may turn to law enforcement institutions, applies also to the stage of basic education. Hence, at present, the Constitutional Court has no grounds to conclude that the contested provisions would cause deterioration of the quality of education at the level of basic education.

37.2. Also at the level of basic education, private educational institutions have all the possibilities, referred to above, for ensuring the acquisition of the curriculum related to the language of an ethnic minority, culture and ethnic

singularity in the form of classes in interest-related education. Since basic education is part of formal education, which is characterised, *inter alia*, by the break-down of the curriculum in lessons, a programme of interested-related education can be implemented before or after the acquisition of the mandatory curriculum or after lessons.

At the court hearing, private educational institution “LATREIA” acknowledged that it, on its own initiative, exercising the discretion of private education institutions in organising the education process and implementing interest-related education programmes, was ensuring to Grade 1 four classes of the interest-related education in the minority language and culture per week and three such classes per week to Grades 4 and 7 (*see Case Materials, Vol. 4, p. 106*). As noted by *Dr. paed. Ineta Helmane*, at the pre-school age, three to five hours per week could be appropriate for the acquisition of an interest-related educational programme related the minority language, culture and ethnic singularity (*see Case Materials, Vol. 2, p. 104*).

It is essential that, in this stage of education, it was possible to use the experience gained previously in implementing minority educational programmes and transfer the curriculum that previously had to be acquired in the process of general education to the process of interest-related education. It was possible to use, *inter alia*, the model programme and teaching materials, developed for the subject “Minority language and literature” while implementing the project “Competency-based approach to curriculum” (*see Annotation to draft law No. 1519/Lp13 “Amendments to Education Law”*).

At the level of basic education, private educational institutions can ensure acquisition of the minority language, as well as the curriculum related to the ethnic and cultural singularity of the ethnic minority in the form of optional classes. Pursuant to Sub-para 12.2. of Variant 1 of Annex 11 “Model programmes of Basic Education” of the Cabinet Regulation of 28 November 2018 No. 747 “Regulation on the National Standard of Basic Education and Model Programmes of Basic Education”, the optional classes that are organised for a group of educatees, on the basis of parents’ application, are included in the educational curriculum outside the total workload of lessons. The

Jewish Chabad Secondary School is using this possibility to teach the subjects of Jewish cycle in the framework of optional and interest-related educational programmes (*see Case Materials, Vol. 2, p. 90*). At the court hearing, the private educational institution “LATREIA” also admitted that, based on agreement by all parents, it is possible to integrate lessons in the minority language among lessons in other subjects or teach it as an optional subject (*see Case Materials, Vol. 3, pp. 107 and 108*).

Likewise, the local government’s obligation, determined in Section 47³ of Education Law, to ensure the possibility to educatees belonging to ethnic minorities who are acquiring pre-school educational programme in institutions of general education, located in its territory, to acquire, free of charge, the curriculum in interest-related educational programmes of minority language and cultural history applies also to the level of basic education. Also at this level, local governments may delegate organising of such interest-related education to private educational institutions, granting financing for the implementation of such classes in the amount of three academic hours per week.

As the private educational institution “LATREIA” noted, following the adoption of the contested provisions, the number of educatees in it had not decrease but, quite on the contrary, had increased and the demand was said to be higher than the educational institution’s possibilities to meet it (*see Case Materials, Vol. 4, pp. 112*). Namely, in the course of the reform to the language of instruction in education it had not felt that its existence had been under threat.

Thus, the State has ensured appropriate balance between facilitating the use of the official language and the rights of educatees belonging to ethnic minorities to quality education, as well as preservation and development of their language, as well as ethnic and cultural singularity in private educational institutions at the level of basic education.

Hence, the contested provisions comply with Article 114 of the Constitution in conjunction with the first sentence of Article 112.

38. The Applicants hold that they had developed protected legitimate expectations that their process of education in the private educational institution

would be implemented in accordance with the reform to the language of instruction in education of 2018 and that it would be the last reform to the language of instruction in education. These expectations had been founded on the opinions expressed by the *Saeima*, the Ombudsman, the Ministry of Education and Science, as well as other persons in legal proceedings before the Constitutional Court in Cases No. 2018-12-01 and No. 2018-22-01.

The *Saeima*, however, notes: the assumption that Amendments of 2018 would be the final stage in the reform to the language of instruction in education has been erroneous. Acquisition of education in the official language and not bilingually in both State and local government, as well private educational institutions had been the very essence of the reform to the language of instruction in education that had lasted even for several decades. With respect to the Applicants, the contested provisions that envisage abandonment of minority educational programmes had entered into effect almost a year after they were adopted. Support measures had been introduced simultaneously with the contested provisions. Hence, the legislator has envisaged lenient transition to the new legal regulation.

The principle of protecting legitimate expectations falls within the scope of Article 1 of the Constitution, it protects such rights with respect to exercise of which a person could have developed legitimate, valid and reasonable expectations. However, the principle of legitimate expectations includes also the possibility that the rights that a person had once acquired can be amended in a lawful and legal way. This principle does not give grounds for believing that the once established legal situation will never change. It is essential that, in such a case, the legislator defines a reasonable transitional period or proper compensation (*compare, see Judgement by the Constitutional Court of 8 March 2017 in Case No. 2016-07-01, Para 16.2.*).

The Constitutional Court has recognised previously that educatees or their parents, choosing a particular educational institution, *inter alia*, may take into account the term for which the specific educational programme has been accredited. Thus, upon enrolling in the specific educational programme, educatees may develop protected legal expectations to complete studies at the

respective level of education in accordance to the legal regulation and educational programme that were in effect at the moment of concluding the agreement or, at least, to continue studies in accordance with this educational programme until the term of its accreditation expires (*see Judgement by the Constitutional Court of 13 November 2019 in Case No. 2018-22-01, Para 24.1.*). However, this *per se* does not mean that the legislator would not have the right to introduce changes to the legal regulation pertaining to such educational programmes, insofar the said changes do not cause substantial impact upon the educational process or, if the changes should be deemed to be substantial, lenient transitional regulation is envisaged.

The Constitutional Court concludes that the changes with respect to the language of instruction and ending implementation of minority educational programmes, envisaged in the contested provisions and legal provisions that are systemically related to them, are substantial. In view of the above, the Constitutional Court must verify whether the legislator has envisaged lenient transitional regulation for implementing these changes in private educational institutions.

The Amendments of 2022 were adopted on 29 September 2022, were promulgated on 11 October 2022, and entered into effect on 25 October 2022. Pursuant to the contested first part in Para 102 of Transitional Provisions of Education Law, adopted by Amendments of 2022, amendments regarding implementation of the pre-school educational programme and the programme of basic general education in Grades 1, 4 and 7 entered into effect on 1 September 2023. Hence, the contested provisions entered into effect approximately 10 months after they were promulgated.

The findings expressed by private educational institutions at the court hearing allow concluding that it had been possible to prepare properly for the impact of the contested provisions within this period. For educatees who had to transition to acquisition of general education only in the official language in the specific school year, in turn, additional support was ensured, for which the legislator had also allocated additional financing. Likewise, at the court hearing, the Applicants did not specify what kind of additional measures they would have

liked to take if the contested provisions entered into effect later. The parents, being aware of the impact of the contested provisions on a child's education within a year after the adoption of these provisions, as well as taking into account that the reform to the language of instruction in education had been implemented for decades and children at the level of pre-school education already previously needed proficiency in the official language had the possibility to use the support materials, available on the website of the Ministry of Education and Science, for the acquisition of the language and the curriculum in Latvian (*see: Skolēnam un ģimenei. Latviešu valodas aģentūras sagatavotais materiāls vecākiem. Available: izm.gov.lv*).

Moreover, transition to acquisition of education only in the official language is implemented gradually, so that the State would be able to ensure to each group of educatees accessibility to financial and other type of resources for more effective acquisition of the official language and course of transition. I.e., other provisions are closely linked to the contested provisions – Sub-para 2 and 3 of Para 102 of Transitional Provisions of Education Law, adopted by Amendments of 2022, provide that transition to education in the official language in Grades 2, 5 and 8 will begin on 1 September 2024 but in Grades 3, 6 and 9 – from September 2025.

Thus, the contested provisions comply with the principle of legitimate expectations and, hence, also with Article 1 of the Constitution.

The Substantive Part

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

held:

to recognise Section 9 (1¹), Sub-para 1 of Para 102 of Transitional Provisions of Education Law and Sections 1, 5 and 6 of the Law of 29 September 2022 “Amendments to Education Law” as being compatible

with Article 1, the first sentence of Article 112, and Article 114 of the Constitution of the Republic of Latvia.

The judgement is final and not subject to appeal.

The judgement was pronounced in Riga on 10 July 2024.

The judgement enters into effect upon being pronounced.

Chairperson of the court hearing

Aldis Laviņš